Gt. Brit. Court

#### The Fourth PART of the

# REPORTS

OF

### Sir Edward Coke, Kt.

The King's ATTORNEY GENERAL,

#### OF

Divers Resolutions and Judgments given upon solemn-Arguments, and with great Deliberation and Conference of the most Reverend Judges and Sages of the Law, of Cases difficult, in which are great Diversities of Opinions, and which were never resolved or adjudged, or reported before: And the Reasons and Causes of the said Resolutions and Judgments.

of the most happy Reign of the most High and most Illustrious JAMES King of England, France and Ireland, and of Scotland, the 37th, the Fountain of all Piety and Justice, and the Life of the LAW.

With REFERENCES to all the BOOKS of the COMMON LAW, as well Ancient as Modern.

Abominables Regi qui agunt impie, quoniam Justitia sirmat solium.
PROVERS. 16.-1

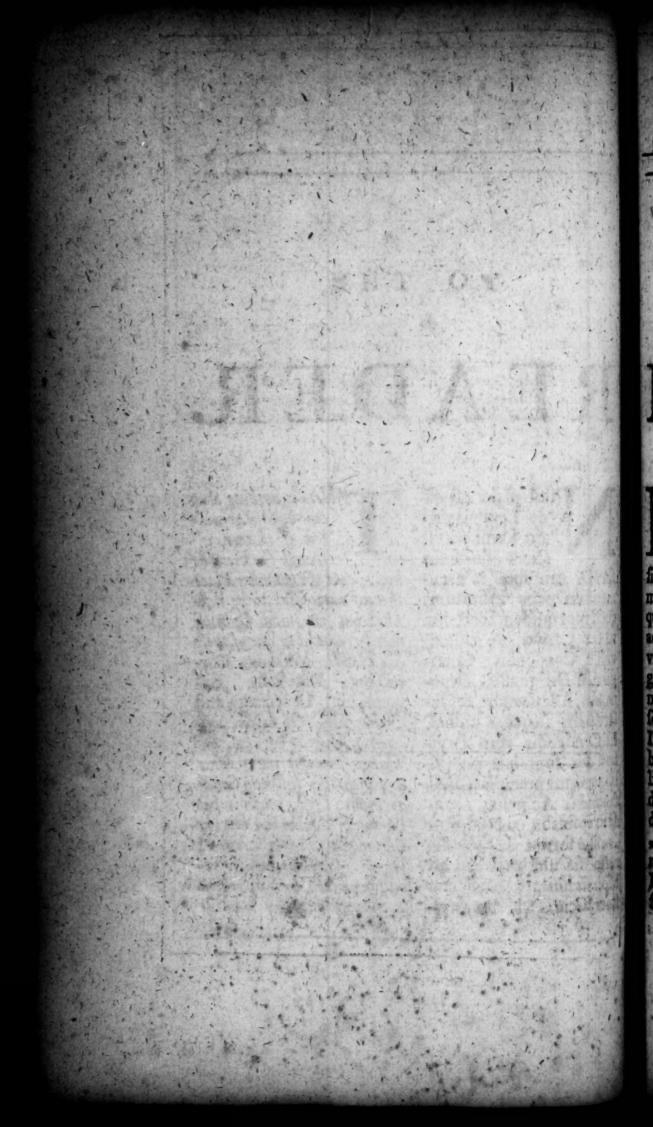
Muntas Regis labia justa, qui recta loquitur diligetur.

PROVERS. 16. 13.

paicfico. Phat. 37.37.

#### In the SAVOT:

Printed by E. and R. NUTT, and R. Gosling, (Assers of Edward Sayer, Fsq.) for D. Browne, I. Malthoe, B. Lintot, R. Gosling, W. Bears, E. Mard, W. Innys, J. Dsborn, I. Booke, E. Moodward, J. Clay, E. Mooton, R. Williams in, and A. Mard. M. DCC. XXVII.



#### TO THE

## READER.

Thil plane eft qd' de Legibus dici aut scribi potest (licet spaciosus fit ille campus, & argumentum pene infinitum) quod mea quidem sententia ed sex Capita, de iisdem, vidl't, Condendis, Corrigendis, Dirigendis, Exponendis, Addifcendis, & Oblervandis nequeat reduci. In Condendis vero Legibus, fex funt quæ inter ala veniunt precipue confideranda. Ac primum quidem ipsius in qua feruntur milius forma, quando alia nto sit ubi regimen est Monarchium, alia ubi arilocraticum, ubi democra-

Here is nothing that can be said or writen of Laws, al-though the Field be large, and the common Place thereof may feem to be infinite, but in mine Opinion may be reduc'd to one of these Six Heads, Making, Correcting, Digefting, Expounding, Learning, and Observing. Of Laws, concerning Making of new, Six Things amongst many other do principally fall into Confideration. First, under what Form of Commonwealth the Lawmakers be governed; for one Consideration is requifite where the Government is Monarchical, another

mben it was Aristocratical, and a Third when it is Democratical. Secondly, to know the several Kinds of the Muncipal Laws of bis own proper Nation: For the Innovation or Change of some Laws is most dangerous, and less Peril in the Alteration of others. Thirdly, to understand what the true Sense and Sentence of the Laws then standing is, and bow far forth former Laws have made. Provision in the Cafe that falleth into Question. Fourthly, by Experience to apprehend what have been the Causes of the Danger or Hindrance that bath fallen out in that particular to the Commonwealth, either in re-Spect of Time, Place, Persons or otherwise. Fifthly, to forefee that a proportional Remedy be applied so, as that for curing of some Defects pult, there be not a stirring of more dangerous Effects in future. Sixtbly, the mean, and that only is by Authority of the high (that in Troth is the bigheft) Court of Parliament. Concerning the Correction of old, the same Respects are to be observed, that bave been faid touching the Making of new. For Digesting of former Laws into Method and Order, Three Things are requisite: Judg-ment to know them, Art to difpole them, and Diligence

ticum rurfie alia. Alterum vero est legum mnnicipalium, quæ nationi illi propriæ funt, in fingulis fuis generibus certa cognitio, quandoquidem periculofa magis fit harum quam illarum Legum five antiquatio, five innovatio, five denique immutatio. Tertium eft. ut verum sensum atque fententiam illarum legum quæ tum obtinent, necnon- quousque Leges superiores causta controversæ prospexerint teneamus. Quartum, ut ra-tiones periculi aut damni, fi quid in illo casu reipublicæ acciderit, refpectu tempor', loci personarum, aut undecunque alias, experientia aflequamur. Quintum, diligens cautio est, ut remedium aptum atque commodum tic adhibeatur, ne dum aliquibus malis præteritis mederi cupimus, futura alia longe periculofiora extemus. Ultimum est legum ferendarum medium, quod totum in magnæ illius & fupremæ fane curiæ Parliamenti authoritate positum est Legum emendation antiquarum quod attinet, eædem plane cautiones observanda funt, quas incondentis novis supra attigimus. Ad Leges

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methodum atque ordinem dirigendas, tria requiruntur; Judicium ad eas cognoscendas, ars ad difponendas, denique diligentia ad complectendas ingulas ne quæ omittatur. Legum expositio ordinarie quidem reverendos Judices regnique fapientes ipectat, in maximis vero difficilimisque causis supremum parliamenti judicium. De addicendis Legibus earumque fcientia aflequenda in prafatione ad primum meum Librum paucula præfatione ad Legum observatio attigi. omnes quidem in genere respicit, præcipue vero ac ipeciatim nonnullos, ut postea annotabitur, nam lumma lequar fastigia rerum. Status hujus Regni monarchius est, & origims jure hæreditario inherenter fuccessivus: Abfolutifima fane perfectifimaque woulders forma, utpote quæ interregnum atque infinita fimul incommoda penitus excludat. Habetur enim in communi jure axioma, Regem Anglid nunquam mori: Quod lane verum est respectu perpetuo durantis, & nunquam morientis politicæ capacitatis. Leges hic in Anglia tripartitæ 3 jus

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tees vero superiores in to omit none of them Th Expounding of Laws dotb ordinarily belong to the Reverend Judges, and Sages of the Realm: And in Cafes of greatest Difficulty and Importance to the high Court . of Parliament: Concerning Learning, and attaining to the Knowledge of thefe Laws, I have in the Preface of my first Edition somewhat touched. The observing of Laws doth concern all what soever ; but principally some in particular, as bereafter shall be touched, for Summa fequar fastigia rerum. Our Kingdom is a Monarchy Successive by inherent Birthright, of all others the most absolute and perfect form of Government, excluding Interregnum, and with it infinite Inconveniences ; the Maxim of the Common Law being, that the King of England never dieth, which is true in respect of the ever during, and never dying Politick Capacity. The Laws of England, confift of Three Parts, the Common Law. Customs, and Acts of Parliament: For any fundamental Point of the antient common Laws and Cultoms of the Realm, it is a Maxim in Policy, and a Trial by Experience, that the Alteration of any of them is most dangerous; for that which

balb been refined and per- commune, Consuetudines. feeled by all the wifest Men in former Succession of Ages, and proved and approved by continual Experience to be good and profitable for the Commonwealth, cannot without great Hazard and Danger be altered or changed. Infinite were the Scruples, Suits, and Inconveniencies that the Statute of 13 E. 1. de Donis conditionalib' did introduce, which intended to give every Man Power to create a new found Estate in Tail, and to establish a perpetuity of bis Lands, Jo as the same should not be aliened nor letten, but only during the Life of Tenant in Tail, against a fundamental Rule of the Common Law, that all Estates of Inberitance were Fee-simple; whereupon these Inconveniencies insued, Purchases defeated, Leases evioled, other Estates and Grants made upon just and good Confideration were avoided, Creditors defrauded of the just and due Debts. Offenders imboldned to commit capital Offences, and many other Inconveniencies followed: Also, what Suits and Troubles arose by the Statute of cap. 34 Ed. 3. of Nonclaime, enacted against a main Point of the Common Law whereby infued the universal Trouble of the K's Subjeds as it was resolved in Par-

ac decreta Comitiorum: Jam principia atque fundamenta Juris communis & confuetudinem regni quod attinet, axioma politicum eft, usu atque experientia ratum, periculofiffimam esse uniuscujusque eorum alterationem : Od' enim a sapientissimis olim viris longa ætatum ferie politum ac perfectum eft. inde vero affidua experientia bonum atque utile reipublicæ probatum & approbatum, illus fine magno periculo ac discrimine mutari aut alterari nequit. Infiniti fuerunt scrupuli. lites. & incommoda ex statuto, 13 E. 1. De Donis conditionalibus, introducta: ubi cautum fuit ut penes unumquemque effet recens excogitatum jus taliatum, hoc est limitatum, incifum aut reftrictum creare: terrarum insuper suarum perpetuitat' quandam ftabilire, adeo ut neque alienari, neque locari, nih durante naturali vita tetentis illius (ut loquimur) taliati possent: Atque hoc contra fundamentale principium Iuris communis, videlicet, quod bareditatum jus omne per feudum simplex transiret: Unde incommoda hæc aliaque plu. runa segunta sunt, empto.

#### To the READER.

re defraudati, locationum formulæ evictæ, fratus ali atque donationes æquis bonique rationibus conceffe penitus fruftatæ emincri argento creditores, fontes ad capitalia flagitia perpetrande animitati. Adhæc cuivis etiam vel mediocriter infituto apparet, quæ lites, quantæ turbæ, ex statuto illo ortæ funt: c. 34 Ed. 3. cui titulus de non reposcendo, nob' Non elaime, lato contra Juris communis præcipium fundamentum; unde tot molestia subditis exhibitæ velut in Comitus illis, 4 H. 7. cap. 24. conclusum ac definitum est. Quam vero lubtiles ac spinolæ quæstiones indies pullularunt de validitate atque interpretatione testamentorum quibus datæ funt terrarum hæridates, quæ tamen jure communi, ante itatuta teltamentaria, 32 5 34 Hen. 8. legari non poterant, quotidiana experientia clare docet, ad multorum quidem ruinam, plurimorum vero damnum ac detrimen-Atque præ cæteris, recentes qued' inventiones ac commenta, in latildatione firmandisque terrarum policinon, per limitation quorundam utum, tub novis & fanaticis cautioni-

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liament in 4 Hb 7. cap. 24. is apparent to all of least Understanding: What intricate and subtile Questions in Law daily droft upon the Validity and Confiruction of Wills of Lands, which by the Rule of Law were not devisable before the Statutes of 32 & 34 H. 8. of Wills, daily Experience to the Ruin of many, and Hinderance of Multitudes manifestly teacheth. But above all, certain late Inventions and Devises in Assurances of Lands by Limitation of Uses, under Upstart and wild Provisoes and Limitations, fuch as the Common Law never knew, do breed and multiply infinite Troubles, Questions, Suits, and Difficulties: In the Parhament bolden in the 20 Tear of King Henry III. it was moved that Children born before Marriage (being Baltards by the Common Laws of this Realm, the Wisdom of the Law abborring clandestine Contracts) might be legimate according to the Civil or Ecclesiastical Laws, whereunto fatth the Statute, Omnes Comites & Barones una voce refponderunt, Nolumus leges. Anglia mutare que huculque ulitatæ lunt & approbatæ: In which few Words is observable; first, the absolute Concord and Unity, una voce, of all the Peers

Secondly the Demal, Nolumus leges Anglia, not of Normandy, or of any other Nation, as is fondly dreamed, as elsewhere I have shewed, but the Common Law of England: And thirdly, the Reason of their Denial: Que hactenus usitatæ funt & approbata, as if they [bould bave faid, we will not change the Laws of England, for that they have been anciently used and approved from Time to Time by Men of most singular Wisdom, Un-Randing, and Experience. I will not recite the (bury Law of the Locrenies in Magna Græcia, concerning those that fought Innovation in preferring any new Law to be made, you may read it in the Glos of the first Book of Justinian's Institutes, because it is too sbarp and tart for this Age: But take we the Reason of that Law, Quia leges figendi & refigendi confuetudo est perniciofa. But Plato's Law I will recite touching this Matter, which you may read in bis 6th Book de Legibus; if any Citizen do Invent any new Thing, which never before was read or beard of, the Inventor thereof, (ball first Practice the same for the Space of 10 Years in his own House, before it be brought into the Commonwealth, or published to the People, to the

and Lords of Parliament: bus, quas ne novit quidem jus nostrum, infinitas plane turbus, quæstio nes, lites, ac difficultates & pariunt, & multiplicant. In comitiis habitis Anno 20 Hen. 3. propositum & rogatum est, ut liberi ante matrimonium nati (quos omnes Jus noitrum commune (prudenter quidem abhorrens a clandestinis nuptus) habet pro spuris) ex inftituto juris Civilis aut Ecclefiastici, fierent legitimi; Cui (inquit Lex) omnes Comites & Barones una voce responderunt, Nolumus Leges Anglia mutare, que bucusque usitate sunt & approbate. In quibus verbis (numero fane paucis) observari potest. 1. Abfoluta concordia atque unitas, una voce, omnium, fcil', Comit' & Baronum in Comitiis. 2. Negationis forma, Nolumus Leges Anglia, non Normannia, aut alterius cujuivis Nationis, ut nonnulli imprudenter fomniant (ficut alibi oftendemus) fed Jus Commune Anglia. 3. Negationis ratio, videlicet, qua bactenus ustatæ sunt & approbate: Ac si dixissent, Nolumus mutare Leges Angliæ, utpôte de tempore in tempus a viris fingulari prudentia, ingen10, nio, experientia preditis antiquitus usurpatas atque approbatas. Nolo hic commemorare Locrenfium illud in magna Græcia decretum fane afperum, in eos latum qui novit rebus ftudentes, legem aliquam novam atque inauditam rogarent: Apud fultinianum in gloifa ad primum librum inflitutionum lectu eft, & vereor ut huic ætati acefcat plus fatis: Rationem tantum illius decreti fic habere, Quia Leges figendi & refigendi consuetudo of periculosissima. Platonis vero legem de hac re recitabo, que habetur apud cum 6 de Legibus: de quis Crvis nondum quid & mauditum invenerit, illud ad decennium in Juis adibus inventor exerceat, boc fine, ut h utile probetur inventum prosit authori, sin vero malum, ipsi soli, non reipublice noceat. Probo etiam & edictum illud a Suetono relatum, videlicet: Que præter consuetudinem & morem majorum fiunt, neque placent, neque recta Widentur. Atque lane dilcuperem Honorii & Arcadu institutum illud a notratibus observari, nimirum; Nos fidelissima Detultates retimendus sentio denique & concludo rem hanc Periandri

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End that if the Invention be good, it shall be profitable to the Inventor, and if it were nought, be bimself, and not the Commonwealth might taste of the Prejudice. And I like well the Edict reported by Suetonius; quæ præter confuetudinem & morem majorum funt, neque placent, neque recta videtur. And I would the Commandment of Honorius and Arcadius were of us Englishmen observed, Nos fidelissimæ vetustatis retinendus est: And I agree and conclude this Point with the Apothegy of Pereander of Corinth, that old Laws and new Meats are fittest for us. As concerning the Correcting of the Common Laws, or antient Customs of England, may be applied all that bath been said concern-ing making of Laws: Only this add; That it bath been an old Rule in Policy and Law, that Correctio Legum est evitanda. And yet concerning certain of our Penal Statutes, to repeal many that Time bath antiquated as unprofitable, and remain but as Snares to intangle the Subjects with all: and to omit all those that be repealed, that none by them be deceived, as for Example concerning Drapery, or juch like. To make one plain and per-

perspicuous Law divided ime Articles, so as every Subject may know what Asts be in Force, what repealed, either by particular or general Words, in Part, or in the Whole, or what Branches and Parts abridged, what inlarged, what expounded: So as each Man may clearly know what and bow much is of them in Force, and how to obey them, it were a necella-Work, and worthy of fingalar Commendation: Which bis Majety out of his great Wisdom and Care to the Commonwealth, bath commanded to be done : For as they now fland, it will require great Pains in reading over all, great Attention in observing, and greater Judgment in discerning upon Confideration of the Whole, what the Law is in any one particalar Point : But with this Gantion that there be certain Statutes concerning the Administration of Justice, that are in Effect fo woven into the Common Law, and fo well approved by Experience. as it will be no small Danger to alter or change them: And berein, according to bis Royat Commandment (God willing) fomewhat in due Time ball be performed. For bringony of the Com. Laws into a better Method, I doubt much of the Fruit of that Babour.

Corinthii illo Apothego mate , Antiquis Legibus, & cibis recentibus utendum effe. Juris vero Communis & confuetudinum Angliz antiquar' emendation od' attinet eo referatur quie quid de condendis Legibus dictum eft; unum id addas, receptam olim fuiffe cum in reipublica administratione, tum in jurisprudentia, regulam, quod correctio Legum eft evitanda Opera precium tamen interia effet, & fingulari laude dignum, ex Statutis noftris penalibus multa rescindere atque abrogare, que dinturnitas temporis tamquam mutilia antiquavit. & fubditis tantum illa queandis infervient : Ea item omnia omittere que ramdudum abdicata funt. ne quis illis fallatur, veluti de Pannaria, aut confranklibus; unum denique idque perspiculum juris quali corpus condere, ita in articulos distributum ut quivis subditus intelligat, que Statuta obtineant, que abrogentur, five specialibus five generalibus verbis, vel in parte, vel in totos tum etiam quæ membra aut partes reftringuntur, quæ dilatantur, que exponuntur; ita ut cuivis pateat quid quan-

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mantumque in iis valeat, itq; tum illa quid jubeant, tum hic quomodo pareat; id quod Ma. Regia pro fingulari ejus prudentia atque cura erga rempublicam justit fieri: Nam ut se nunc labent statuta, requirent profecto & in perlegendo ingentem operam, & in obiervando magnam intentionem, maximum veno in discernendo judicium, ut dum quis omnia penfitet, quid Lex sit vel m uno aliquo articulo clare pronunciet. Hic tamen monerite volo, eile quedam Statuta que jufitia administration' refpicunt, ita luri communi intertexta & involuta, adeoquæ experientia pla comprobata, ut periololum plane ellet & convellere aut immutare: Verum hac quidem in re er mandata Regio fiquidem Deus dederit) opportuno tempore aliquid het. Quod vero ad redudionem Juris Communis in commodiorem Methodem attinet, de illius laboris fructu plurimum dibite ; illud fcto, quod compendia in multis quidem feientis authoribus plis profuerunt, verum aliis (præfertim ut nunc murpantur) non mediocri-

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This I know, that Abridge ments in many Professions have greatly profited the Authors themselves; but as the are used, have brought no mall Prejudice to others: For the advised and orderly Reading over of the Books at large in luch manner as elsewhere I have pointed at, I absolutely determine to be the right Way to enduring and perfect Knowledge, and to use Abridgments as Tables, and to trust only to the Books at large: For I bold bim not discreet that will Se-Ctari rivulos, when he may petere fontes. And certain it is that the turnituary reading of Abridgments, doth cause a confused Judgment, and a broken and troubled Kind of Delivery or Unerance: But to reduce the faid penat Lates into fuel Method and Order and with such Caution as is abovefaid (which cannot be done but in the high Court of Parliament. nor without the Advisa of (uch as before is touched) were an bonourable, profitable and commendable Work for the whole Commonwealth. This ath Part of my Reports doth concern the true Scence and Exposition of the Laws in divers and many Cules, never adjudged or relolved before: Which for that they may in nune Opinion tend to

the general Quiet and Benefit of many, the only End (God knoweth) of the Edition of them; I thought it a Part of my great Duty that I owe to the Commonwealth not to keep them private, but being withal both incouraged, and in manner thereunto inforced, to publish and communicate them to all, wherein my Comfort and Contentation is great, both in respect of your fingular and favourable Approbation of my former Labours, as for that I (knowing mine own Weakness) have one great Advantage of many famous and excellent Men that have taken upon them the great and painful Labour of Writing: For they, to give their Works the more Authority and Gredit; have much us'd the Figure Prosopopeia in faining divers Princes, and others of bigh Authority, excellent Wildom, profound Learning, and long Experience, to speak such Sentences, Rules and Conclusions. as they intended and defired for the common Good, to bave obeyed and observed, as Zenophon the great in his Book which be wrote of the Institution of Princes, faineth that King Cambyses taught and speak many excellent Things to Cyrus his Son; and in another Book

ter obsuerunt. Illud enim absolute statuto (qd' & alias, atiam attigi) majorum librorum fludiosam & methodicam perlectionem, certam viam ac rationem effe ad conftantem perfectamque jurisprudentiam affequendam: Interim compendiis tanquam indicibus utendum cenfeo. libris vero ipfis innitendum ac fidendum; neque enim prudentis arbitror fectari rivulos, ubi fontes iplos petere liceat. Et fane constat tumultuar' compendiorum lection', confufum judic' & interruptam ac perturbatam elocution' causare. Leges vero pœnales in eam methodum atq; formam (adhibitis infup' cautionibus quas suprapoluimus) reducere, (qd' non nifi in honorario Commitiorum conventu, neq; fine eor' quos prius attigimus confilio fieri potest) opus eflet universæ rerpub.utile, laudabile, gloriofum. Quarta hæc pars Relationum meorum, verum fenfum atq; exposition' Legum in multis capitibus nunquam prius judicatis aut definitis continet: Quæ quia ad commune multor' bonum ae tranquillitatem (mea opinione) spectare vident, (quem novit Deus) unum mihi finem in illis edendis fuifle

fuiffe proposit', officii mei gera rempub. putavi eas non supprimere, verum efferre in lucem omnibulg; publicare, ad id præfertim non invitatus modo, sed tractus qualiq; compulius: Qua quidem in re magna mihi solatio est, tum fingularis veftra fuperiorum mearum elucubration' approbatio, tum qd' imbecilitatis meæ conicius, illud unum mihi præ multis illustribus sane ac præstantilimis viris, qui difficilem hunc scribendi labor' sufceperunt commode accidit, qd' illi quo fidem atq; authoritat operib fuis conciliarent, figura illa quam Projopoparam vocant fapius usi sunt, dum multis principib' aliilq; in lumma potestate constitutis, denique excellenti prudentia recondita doctrina, longa experientia viris, easiententias, regulus ac concluliones affinxerunt, quas ipfi ad bonum publicum rehpi atque observari volebant & cupiebant: Ita magnus ille Xenophon in libro quem de institutione principis scripsit, fingit imprimis quod Cambyses ple Cyrum filium multas res præftantiflimas docuit; & rurfus de diciplina Militari sermonem initituens, regem Philippum inducit, Alexandrum

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which he wrote of the Art of Chivalry, be faineth bow K. Philip taught and instructed bis Son Alexander to fight. But I, without Figure, or faining, do report and publish the very true Resolutions, Sentences and Judgments of the Reverend Judges and Sages of the Laws themselves, who for their Authority, Wildom, Learning and Experience, are to be bonoured, reverenced and believed. The due Observation of the said Laws doth generally without any Limitation or Exception concern all: But principally Princes, Nobles, Judges and Magistrates, to whose Custody and Charge the due Execution (the Life and the Soul of the Laws) is committed; for that they in respect of their Places are more eminent and conspicuous than other Men. wherein three Things are necessarily required, Understanding, Authority, and Will: Understanding concerneth Things and Persons; that is, first what is Right, and just to be done, and what ill, and to be avoided; lecondly, what Persons for Merit are to be rewarded, and what for Offences to be punisbed: And both in Reward and Punishment to observe Quantity and Quality. Authority to protect the good, and to chaftife the ill. Will prompt

prompt and ready duly, finegrely, and truly to execute the Law. But for asmuch as many Adversaries, and two open Enemies do continually lie in wait to Assault this good and ready Will, it must of Necesfity have two defensive compleat Armours of Proof: First Integrity against these 6 secret Adversaries, Gifts, Affections, Intreaty, Anger, Precipitation, and Morofa cunctatio, pevifb delay. Secondly, Fortitude and Con-Stancy against the Terror of Malice and Year of Danger, two open and violent Enemies: Videte Judices quid faciatis, non enim hominis exercetis judicium sed Domini, & quodcung; judicaveritis in vos redundabit. And Deus est Judex justus, fortis, & patiens, and so must every Judge be. Justus, without respect to give every Man his own: And therefore Judicia are so called, because they are tanguam Juris dicta, and the Law whereby you judge est meus quædam nullo perturbata affectu, Arift. lib. 3. polit. Fortis against Malice and Danger, Neg; timida probatas, neg; improba fortitudo reipublice estutilis. And Patiens, when he doth Justice sincere-ly and with a good Con-Science, and yet is despised, despited, or disgraced : Non

filium funm ad pugnam instituentem: Ego vero fine figura aut fixione omnino aliqua, fero in publicum ipfillimas quidem folutiones, fententias ac judicia, reverendissimorum Judicium legumque Antistitum, qui propter authoritatem, prudentiam, doctrinam, atque experientiam, facile honorem. reverentium ac fidem merentur. Jam vero legum justa observatio, ut in genere omnes absque ulla limitatione aut exceptione respicit, ita præcipue Principes, Nobiles, Judices, ac Magistratus, quorum fidei & tutelæ earum debita administratio (quam vitam atque animam legum vero dixeris) committitur ac demandatur; quando illi respectu ordinis & loci quem obtinent, longe eminentiores atque conspicui præ aliis existunt. Hic ergo tris necessario requiruntur, Judicium, Authoritas, Voluntas: Judicium res aut perionas respicit, id est, primo quid fachu rectum Justumque, quid item malum ac declinandum. Quibus pramia merito debentur, quibus etiam poenæ; ac ut in utrique quantitas & qualitas juite observetur: Authoritas ad bo-

2 Paralip. 19. verf. 6.

bonos tuendos, malos puniendos: Denique voluntas prompta atque expedita ad fynceram ac debitam legum executionem: Quomam vero multi adversarii & præsertim duo holtes aperti, juite huic ac promptæ voluntati lemper infidiantur, duplici armatura gravi & defensiva opus eft. 1. Integritate adverfus fex latentes hoftes, Dona, Affectiones, Rogationes, Iras, Præcipitationem, & moroium 2. Forticunctationem. tudine & Constantia contra terrorem malitiæ, & timorem periculi, qui duo hoftes funt aperti acerrimique. Videte Judices quid faciatis, non enim bominis exercetis judicium sed Domini, & quodeunque judicaveritis, in vos redundabit. Deus eft Judex justus, fortis, Epatiens, talem decet efle omnem Judicem. flum, fine respectu quod fuum eft cuique dando, 1deoque Iudicia lic dicuntur quasi Juris dicta; & Lex fecundum quam judicium fit, est mens quædam nullo perturbata aftectu, Arift. polit. 3. Fortem, contra malitiam & periculum; nam neque timida probitas, neque improba fortitudo reipub. est utilis. Denique Patientem, ut sincere & ex

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folum (pœna, fed patientia acquiret nomen perlecutionis, & gloriam victoriæ. Ariftotle, lib. 2. Top: Melius est judicare lecund leges & literas, quam ex propria icientia & lententia. Ignorantia Judicis est plerumq; calamitas junocentis, and bereof it proceedeth that the Kings of this Realm have bad fuch special Gare of calling Juch Men to judicial Places, as bave Knowledge, and other the Incidents inseparable abovemention'd. And because these fudges are (if Order be observed) taken of such as be Serjeants, especially Care is always taken in calling Men of Learning, Integrity, and Living to that State and Degree; never can a fudge punish Extortion, that is corrupted himself, nor any Magiftrate punish any Sin as he ought, that is known to be an Offender therein bimself; therefore it is an incident inseparable to good Government, that the Magistrates to whom the Execution of Laws is committed be principal Observers of the same themletves. But herein bear what Iball be laid, to the which nothing can be added; Et nunc regis intelligite, erudimini qui judicatis terram, Servite Domino in timore, & exultate ei

cum tremore, apprehendite disciplinam, ne quando irafcatur Dominus, & pereatis de via juita. Whosoever will be compleat Judges, Intelligite, apprehendite, erudimini, fervite, exultate, you must be apparelled with the rich Robes of Understanding and Learning, you must your selves imbrace Discipline, you must observe the Laws your selves,. with great Fear an Humility, which if you will do, Servite Domino in timore; you must be Chearful, and Comfort your selves in doing of Justice, for you shall find many Crosses and Dangers. Et exultate, but yet cum tremore, do all thele Things least ye enter into Wrath, and so ye perish from the way of Righteousness; whereby it appeareth, that the greatest loss a fudge or Magistrate can have, is to give himself over to Passion, and his own corrupt Will, and to lose the way of Righteoujness, Et pereatis de via justa. To the whole Body of the Realm concerning this Point I fay, your Fault will be the greater, if baving a Sovereign so religious, Wife and Learned, so great an observer of Laws, Jo Virtuous of bis own Person, you apply not your felves to his Example and President; for the Heathen

pura conscientia justitiam administret, licet inde despicatui, opproprio, forte etiam ludibrio habitus fit: nam non folum pæna, fed patientia acquirit nomen persecutionis, & gloriam Arift. 2. Top: victoriæ. Teltus inquit est judicare Secundum Leges & literas. quam ex propria scientia & lententia. Ignorantia Judicis est plerumque calamitas innocentis. Atque hinc eft quod Regibus nostris illud imprimis curæ semper fuit, ut ad jus pubfice dicendum eos promoverent qui icientia alifque supradictis virtutibus præpollerent. Et quoniam Judices hii ordinarie quidem ex servientibus ad Legem eliguntur, cautum præcipue eft, ut ad statum & gradum ill' non nisi viri doctrina, integritate, opibus pares vocentur. Neq; enim potest Index de pecunis repetundis alium damnare, qui est ipse compilator: neque cuivis Magistratus crimen aliquod uti parelt punire, cujus iple reusel le dignoscitur. Illud ergo in omni bene inftituta repub. necessario requiritur, ut Magistratus quibus legum administratio committitur, easdem ipsi prz alus obiervent, ad quam rem

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rem fententiam illam (cui nihil addi potest) apponam: Et nunc Reges intelligite, erudimini qui judicatis terram: Servite Domino in timore, & exultare ei cum tremore, apprebendite disciplinam, ne quando irascatur dominus, & pereatis de via justa. Qui judices completi esse vultis intelligite, apprehendite, erudimini, lervite, exultate, preciosis imprimis vestibus intelligentiæ & doftrinæ indui iplos vos oportet, disciplinam apprehendere, leges oblerve, idque magno cum tremore ac humilitate; guod ut facere politis, servite Domino in timore: Alacres litis oportet, confcientia juititiæ administratæ solari vos. figuidem multas invenietis tribulationes, multa pericula; & exultate, verum cum tremore: Hæc omnia facite, ne quando iralcatur Dominus, & pereatis de via juita. Unde patet quod gravillima jactura quam Judex aut Magistratus potest facere, in eo est ut passioni lele ac corruptæ iuæ voluntati tradat, atque ita pereat de via juita. Illud denique toti reipub. nostræ corpon dico atque edico, quod graviore omnes culpa rei PART IV.

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Poet could Jay; Regis ad exemplum totus componitur Orbis. But whilft I was intending and going about this Edition, I by Commandment attended upon his most excellent Majesty for Direction about his Highness Affairs that concerned the Duty of my Place to projecute; at what Time I well perceived what princely Care his Majesty bad taken for Execution and Expedition of Justice, and that upon Consideration thereof be found two Impediments therein: One, that in the two eminent Courts of ordinary Justice, the King's Bench, and the Common Pleas, there were four fudges; and many Times in Cases of great Difficulty, the fudges being equally divided in Opinion in either Court, the Matter depended long undecided: For preventing whereof his Majesty in this Term of Saint Hillary, in the first Year of his most happy and prosperous Reign, added a Judge more to either Bench, Sir David Williams Kt. Serjeant at Law, to the King's Bench; and Sir Wm. Daniel Kt. Serjeant at Law, to the Court of Common Pleas, his Majesty's Saying, that Numero Deus impare gaudet. The second Impediment was, that divers Doubts and Questi-

#### To the READER.

Questions of Law remained tenebimur, siquidem Reundetermined, the same rifing partly upon long and ill penned Statutes lately made, partly by reason of late, and new Devises and Inventions in Allurances, which the Eye of the Law in former Ages never beheld, and cannot yet incline to allow them, and partly by Conveyances and Wills drawn and devised by fuch as bave Scientiam Iciolorum quæ eft mixta Ignorantia: Which Questions and Doubts already grown, bis Majely defired might be resolved and determined according to the true Sence of the Laws of the Realm. And where there have been some Diversity of Opinions between certain of the Courts of Juflice, that the same might upon Conference and mature Consideration be agreed and resolved. And his Majesty Understanding (as it feemeth) by reason of my former Editions, that I have observed many Determinations and Judgments of questionable and doubtful Cases, which upon great Study, Consideration, Conference and Deliberation, bave been resolved and given by the Reverend Judges and Fathers of the Law, required me to proceed, and for the general Good and Quiet of the Subjest to publish them, whose

gem habentes adeo pium, prudentem, doctum, diligentem legum virtutumo; omnium cultorem, illius nos exemplo non accommodemus, quando poeta ethnicus dicere potuit; Regis ad exemplum totus componitur Orbis. Interez verodum huic Editioni operem dabain, Regiam Majestatem ex mandato adii decelfitudinis ipfius negotiis quibuldam ordipandis, quorum administratio munus meum spectabat; quo quidem tempore illud imprimis peripexi, quam impense Magift. ipfius execution atq; expeditionem justitize curaverat, quodq; re mature penfitata, duo ejus impedimenta invenisset: Unum guod in duabus eminentilfimis justitize ordinariz Curiis (Banco, viz. tam regio, quam Communi ut loquimur) quatuor tantum judices essent, unde læpius usu venit, ut in causis perplexis & difficilioribus, æqualiter divisis ac difcrepantib' Judic' utraq; Curia fentent', lis non decifa diutius penderet : Cui malout occurreret, placuit Magift. ejus in hoc Term' S. Hill, an' 1, fæliciffimi ipfi'ac florentissimi Regni, utrique Banco (ut loquimur) Judicem

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cem quintum addere: Regio quidem Day. Williams equitem, servientem, ad Legem, Communi vero Gulielmum Damel equitem, fervientem item ad Legem: Dicente intuper Magift. fua, quod Numero Dew impare gaudet. 2. Impedimentum tuit, quod multæ quæstiones dubiæ adhuc maneant non definitæ; quæ quidem ortæ funt, partim ex statutis quibuld recentionib perplexis ac male icriptis; partim ex commentis atq; inventionabus novis in paetis firmandis & fatildatitionibus: Quales neque vidit oculus juris apud iaculum prius, neque etiam dum adduci potest ut approbet aut amplexetur: Partim denig; ex Pactionibus & Teltamentis Icriptis factifg; ab iis qui icientiam babent Sciolorum, quæ elt mixta ignorantia. Quæ lane quæstiones atq; controversiæ jamdiu ortæ, ut lecundum verum fenfum Legum hujus Regni folvantur, Magist. ipsi' magnopere defideravit; nec non ut discrepantes sententiæ atque opiniones judiciarize in diversis foris ortæ, communi confilio & matura deliberatione componantur atq; determinennur. Quin & certior factus ker, ut videtur, quod in

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Commandment being to me fuprema Lex, bath both incouraged and imposed a Necellity upon me to publish this 4th Edition: Which containeth nothing but his Majesty's own, being sweet and fruitfulFlowers of his Crown; for the Laws of England are indeed so called, Jura Coronæ, or Jura Regia : Becaule as Bracton, lib. 1. cap. 8. faith: Iple autem Rex, non debet effe fub homine, fed fub Deo & Legia, quia Lex facit Regem: Attribuat igitur Rex legi, qd' Lex attribuit ei, videl domination' & imperium; Non est enim Rex ubi dominatur voluntas, & non Lex: That is, the King is under no Man, but only God and the Law, for the Law makes the King: Therefore let the King attribute that to the Law, which from the Law be bath received, to Wit, Power and Dominion: For where Will, and not Law doth fway, there is no King. And in the Register the Words of the Writ of Ad Jura Regia, be, Rex, &c. falutem: Ad jura nost' Regia ne depereant, leu per aliquor usurpationes indebit' aliqualiter subtrahantur, quatenus juite poterimus, manutenenda, lubtractaq; & occupata, fi quæ fuerint ad statum debitum

revocanda, necnon ad impugnatores eorundem jurium nonftror refrænandos, & prout convenit juxta eor demerita puniendos, eo studiosius nos decet operam adhibere, & solicitius extendere manum noitram, quo ad hoc vinculo Juramenti teneri dignoscimur & aftringi, plurefque confpecimus indies jura illa pro viribus impugnare, &c. 1. That our kingly Laws and Rights perish not, neither be at all withdrawn by undue Usurpation of any, which so far forth as justly we may, are to be maintained, and if any shall be withdrawn or diverted, to be again restored to their due State; as also for the bridling of the Impugnors of those our faid Laws, and the pumibing of them as is meet according to their Deferts, we ought the more diligently to provide, and the more carefully to extend our Hand and Authority; for that we are known to be thereto tied and bound by the Bond of an Oath, and for that we daily fee very many to their Fowers to impugue those said Laws. And again, Rex, &c. falutem. Ad confervatione Jurium Coronæ nostræ, eo nos decet itudiolius operam adhibere, quoad hoc altringimur vinculo Sacra-

superioribus meis elucubrationibus multas caufarum dubiarum atq; perplexarum decisiones ac conclusion' retulerim, qua magno fane studio, confilio, deliberatione per reverendos Judices at patres Turis datæ fuerint, progredime juilit, eafq; ad publicum bonum atque tranquillitatem Subditor divulgare: Cujus fane mandatum (quod lupremæ Legis loco habeo) ut Quartum hunc librum ederem & me movit, & necessitatem quandam attulit. In quo quicquid continetur ipfius totum ac proprium est, viz. suavistimi lectifimique coronæ flores : Nam & revera funt & appellantur Leges Angliæ. Jura Coronæ aut Jura Regia, quia ut inquit, Bracton lib. 1. cap. 8. Ipfe autem Rex nostrum debet esse sub honune, sed sub Deo & Lege, quia Lex facit Kegem: Attribuat igitur Rex legi, quod Lex attribuit ei, viz. dominationem & imperium. Non est enim rex ubi dominatur voluntas & non Lex. Et in Registro verba rescripti (cui titulus ad jura regia) funt : Rex, &c. Jalutem: Ad jura nostra Regia, ne depereant, seu per aliquorum usurpationes indebitas aliqualiter subtrabantur, quatenni

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tenus juste poterimus manutenenda, Subtractaque & occupata si que fuerint ad flatum debitum revocanda, nec non ad impugnatores corundem jurium nostrorum refrenandos, & prout convenit juxta eorum demerita puniendos, eo studiosius nos decet operam adbibere, & solicitius extendere manum notram, quo ad boc vinculo juramenti teneri dignoscimur & aftringi, pluresque conspicim indies jura illa pro viribus impugnare, Gc, Et rurius, Rex, &c. /alutem: Ad confervationem jurium Corone notra, co nos decet studiosus operam adbibere, quo ad boc astringimur vinculo sacramenti, & alios conspicimus ad ipsorum jurium enervationem ampliw anbelare, &c. denique concludit, Et sciatis quod h lecus facere præjumpleritis, ad vos tanquam violatores regu juris nostri non immeria to gravitur capiemus. Ex quibus antiquis refcriptis conttat: 1. Quam capitale flagitium semper hahitum eft, leges haice que Imperiales funt & Coronæ jus reipiciunt, impugnare aut calumniari. 2. Quod in omnibus fere eculis Leges litæ multos habuerunt qui eis oblimerent intercederentq; violatores. Denique quam graviter puniendi funt,

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menti, & alios conspicimus ad ipiorum jurium enervatione amplius anhelare, &c. concluding thus, Et sciatis quod si secus tafere prelumpleritis, ad vos tanquam violatores Regu Juris nostri non immerito graviter capiemus, which is, we ought the more earneltly to provide for the Conservation of the the Laws and Rights of our Crown, as being thereunto tied by the Bond of an Oath; and for that we see others the more greedily to gape after the weakning and subverting of those said Laws, &c. concluding thus; and know ye that if ye shall presume otherwife to do, we shall with Grief not undeservedly hold you as Violators of our kingly Rights and Laws. By which ancient Writs appeareth: 1. What an exorbitant Offence it bath been ever deemed to impugne or calumniate these Laws, being the imperial Laws of the 2. That in all A-Crown. ges, thele Laws have bad many that lought to impugne and violate them: And lastly how grievously such as so presumed to offend, should be punished; Nam & fruftra feruntur Leges nifi fevere puniant' contemptores; and it is truly faid, that Non debet Princeps ferre Legum

Legum fuarum ludibrium: And moeful Experience hath often taught, (which I my (elf have sometimes observed) that many of those Men that have strained their Wis, and stretched their Tongues to scandalize or calamniate these Laws, bad either pra-Hifed or plotted some hainous Grime, and therefore bated, because they feared the just Sentence and beavy Stroke. The reading of the several Reports and Records of thefe Laws, doth not only yield immence Profit, as elsewhere I have noted; but doth contain the faithful and true Histories of all successive Times, as well concerning the Punishment of the Evil for their beinous, borrible, and exorbitant Offences, as concerning the Reward and Advancement of Men of great Merit and Virtue for their bigh and bonourable Service in the Commonwealth: And (which is above all) they are Memorials to all Posterity of the valorous Piety, Virtues and Victories of the Kings and Princes of this Realm. The first appeareth most evidently amongst other Things by the Greations and Exections of Men of great defert to eminent Places, and Degrees of Nobility and Honour, of Juch Estates, and in such Manner

qui peccare in hoc genere præsumpserint: Nam & frustra fuerunt Leges nis fevere puniant' contempt', & veriffime dicitur ; Quad non debet Princeps ferre Leg' fuor' ludibr'. Quin & sepius docuit mifera ac luctuola experientia (qd'aliquando iple etiam objervavi) multos qui in id ingenii nervos omnes intenderunt, lingualq; exacuer, ut Legib' hufte fcandal' ant calumniam imponerent, nefarium aligd crimen aut commifille, aut fuifle machinatos; ideoque leges odiffe, quia justam censuram & grav' plag' metuer'. Lectio istar Legum ut referentur ac mandantur literis, non folum utilitatem fummam affert (ficut alias attigi) verum fidelem etiam certamq; historiam omnium superior tempor complecutur, tam respectu pramuatq; provection bonor optimeg; meritor viror, propt' egregium atq; honorabilem operam reipub. datam; quam pœnæ malorum propt' netaria atrocia ac immania flagitia: Denig; (quod caput eft) libu ifti memorales funt ac monumenta ad omnem podientatem pietatis, virtuturn, fortitudinis, atg, vi Ctoriarum Reg' ac Prince pum hujus Imperii: Atq pri

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#### To the READER.

primum quidem clarissime patet cum alas, tam præcipue ex eo, qd' viri optime meriti ad excelía atque illustria loca, nec non ad mobilitatis & honoris gradus evecti funt, tantum ordine mado ac forma a Legib' hujus regai præscript' & conftitutis: 2. Etiam conftat ex formulis convincendi atque profequendi capitalium aliorumque criminum reos : Tercium, er multis præclarishimis fcriptis ac monumentis fideliffimis illis fane & perpetus testibus dignisque adeo que divulgentur omnibulque innotescant : Ad quam rem, (ne extra terminos ac fines, fuos egrediatur præfatio) unum in hoc tempore exemplum ejus generis charitæ five donationis accipite, fadum quidem ab Edgaro Rege Anglia, inde vero cripto traditum, ac vel in huncusq; diem fidelissime ellervatum.

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"Altitonandis Dei largi"flua elementia, qui est
"Ren regnum, & Domi"nus Dominantium, ego Ed"garus Anglor' Basileus,
"omniumq, rerum Insular'
"Oceani que Britanniam
"circumjacent, cunstarum"que Notionum que insta "am includuntur Impera-

and form, as are warranted by the Laws of the Realm: The second by the Records of the Attainders in judicial Proceedings against Capital and other Offenders. And the third by many excellent Records, the most faithful and perpetual Witnesses, and worthy to be published, and made known to all; and therefore at this Time, least my Preface sbould exceed his proper Model of that Sort ; take one Example of a Charter made by Edgar King of England, and recorded, and thereby faithfully continued to this Day.

"Altitonandis Dei lar"giflua clementia, qui
"eft Rex Reg', a Domi"nus Dominantium; E"go Edgarus Anglor Ba"fileus, omniumq, rerum,
"Infularum Oceani quae
"Britan circumjacent,
"cunctarumq, Nationum
"quae infra cam includum-

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" tur Imperatos & Domi-" nus: Gratias ago ipfi " Deo emnipotenti Regi " meo, qui meum impe-" rium sic ampliavit & a exaltavit fuper Regnum " patrum meor'. Qui licet " Monarchiam totius An-" gliæ adepti funt a tem-" pore Athelftani, qui pri-" mus Reg' Angl' omnes " Nationes quæBritanniam " incolunt fibi armis fub-" egit, nullus tamen eor' " ultra fines Imperium " fuam dilatare aggressus " est, mihi tamen conces-" fit propitia divinitas " cum Anglor' imperio, " omnia regna Infularum " Oceani cum suis ferocis-" fimis Regibus usq; Nor-" vegiam, maximamque " partem Hiberniæ, cum " fua nobilissima Civitate " de Dublina, Anglorum " regno fubjugare; quos " etiam omnes meis impe-" rii, colla fubdare Dei " favente gratia coegit. " Quapropter & ego Chri-" fti gloriam & laudem in " regno meo exaltare, & " ejus servitium amplificare devotus disposui: " Et per meos fideles fau-" tores Dunstan', videl't, "Archiepisc', Ayelyolan', " ac Ofwaldum Archie-" piscopus, quos mihi pa-" tres spirituales & consiliatores elegi, magna ex

" tor & Dom' : Gratias ago ipfi Deo omnipotenti Regi ec meo, qui meum imperium " sie ampliavit & exaltavit Super Regn' patrum meo-" rum. Qui licet Monarchiam totius Anglia adepti " funt, a tempore Atholfta-" ni qui primus Regum Anglorum omnes Nationes que Britanniam incolunt " fibi armis subegit, nullus " tamen eorum ultra fines " Imperium suum dilitare " agressus est; mibi tamen " consessit propitia divinitas cum Anglorum imperio, " omnia regna Insolorum " Oceani cum suis ferocissi-" mis Regibus usque Norve-" giam, maxinamque : Par-" tem Hibernia, cum sua " nobilissima civit' de Dubli-" na, Anglorum regni sub-" jugare: Quos etiam omnes meis imperiis colla " subdare Dei favente gra-" tia coegi. Quapropter & " ego Chrifti gloriam & lau-" dem in Regno meo exal-" tare, & ejus servitium amplificare devotus dispo-" sui: Et per meos fideles fautores Dunftanium: " viz. Archiepiscopum, Aye-" lyolanum ac Ofwaldum " Episcopus, quos mibi pa-" tres Spirituales & Con-" siliatores elegi, magna ex " parte disposui, &c. Fasta " funt bec anno Domini 964. Indictione 8 Regni " vero

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t vero Edgari Anglorum Regis 6. in regia urbe " que ab incolis Ocleyeca-" frie nominatur, in Natale Domini festivitate, Sanctorum Innocentum eria 4, Sc. + Ego Edgar Bafilius Anglorum & Imperator Reg' gentium cum consensu & Principium & Archimeorum banc meam munificentram figno crucis corroboro + Ego Alfriie Reu gina consensi & signo crucis confirmavi. + Ego " Dunftan' Archiepiscopus Dorobor. Ecclefia Christi confensi & subscripsi + E-" go Officel Archiep' Eboracensis Eccl confensi & lubscripsi. + Ego Alferic Ego Bruthnod Dux. " Dux. Ego Aridgari Dux. + Ubi hæc observanda: I. Ejus in Deum pictas ac devotio, quæ beatitudinis omnis fons eft & fummum bonum. 2. Imperii ejus amplitudo & Hibern' prima iubjugatio, diu ante tepora Regis Hen. 2.

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" parte disposui, &c. Facta funt hæc anno Dom' 964. Indictione 8. Regni vero Edgari Anglor' " Reg' 6. in regia urbe quæ ab incolis Ocloayeccaftriæ nominatur, in natale Dom' festiviate, fanctorum Innocentium feria 4, &c. + Ego Edgar Basilius Anglor & Imperator Reguum gentium, cum consensu & Principium & Archimeorum meor hanc meam munificentiam fig crucis corroboro. + Ego Alfriie Regina confensi & figni crucis confirmavi. + Ego Dunstan. Archiepilcop' Dorobor. EcclefiæChrifti confenfi " & fubscripsi. + Ego Ofticel Archiopifc. Eboracenfis Eccl' consensi " & subscripsi. + Ego " Alferic Dux.Ego Bruthnod Dux. Ego Aridgari " Dux. + Whereby is to be observed, first his Piety and Devotion towards God the Fountain of all Happiness; the true Summum bonum. Secondly, the Largeness of his Empery, and the first Conquest of Ireland, long before the Reign of K. Hen. the Second: To conclude, of the learned Reader my defire is, that

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tor & Dom' : Gratias ago ipfi Deo omnipotenti Regi e meo, qui meum imperium " fie ampliavit & exaltavit " super Regn' patrum med " rum. Qui licet Monarchiam totius Anglia adepi " funt, a tempore Atholfta-" ni qui primus Regum Anglorum omnes Nationes que Britanniam incolunt " fibi armis subegit, nullus " tamen eorum ultra fines " Imperium fuum dilitare " agressus eft; mibi tamen " consessit propitia divinita cum Anglorum imperio, omnia regna Insolorum "Oceani cum suis ferocissi-" mis Regibus ufque Norve " giam, maxinamque: Partem Hibernia, cum Jua " nobilissima civit' de Dubli na, Anglorum regni subjugare: Quos etiam onnes meis imperiis colla " subdare Dei favente gratia coegi. Quapropter & " ego Christi gloriam Glas " dem in Regno meo exal-" tare, & ejus servitim " amplificare devotus dispo " sui: Et per meos fideles fautores Dunftanium wiz. Archiepiscopum, Aye " lyolanum ac Ofwaldum " Episcopus, quos mibi pa-" tres Spirituales & Con-" filiatores elegi, magna es " parte disposui, &c. Falla funt bec anno Domitt 964. Indictione 8 Regn

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" parte disposui; &c. Fa-" cta funt hæc anno Dom' " 964. Indictione 8. Reg-" ni vero Edgari Anglor' " Reg' 6. in regia urbe quæ ab incolis Ocloayeccaftriæ nominatur, in natale Dom' festiviate, " fanctorum Innocentium teria 4, &c. + Ego Edgar Bafilius Anglor & ImperatorReguum gen-" tium, cum consensu & Principium & Archimeorum meor hanc meam munificentiam lig crucis corroboro. + Ego Alfriie Regina contenta & figni crucis confirmavi. + Ego Dunstan. Archiepiscop' Dorobor. " EcclesiæChristi consensi " & subscripsi. + Ego O-"fticel Archiopifc. Ebo-"racenfis Eccl' confensi " & subscripsi. + Ego "Alferic Dux.Ego Bruth-" nod Dux. Ego Aridgari " Dux. + Whereby is to be observed, first his Piety and Devotion towards God the Fountain of all Happiness; the true Summum bonum. Secondly, the Largeness of bis Empery, and the first Conquest of Ireland, long before the Reign of K. Hen. the Second.

To conclude, of the learned Reader my desire is, that he would either amend that which herein he shall find

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#### To the READER

amils, or at least that he will tem ne partem aliquam not find Fault weth any Part, until be bath feriously read over the Whole, and then it may be, be will reprebend the Lefs: And although berein I have taken all the Labour ; yet I unfainedly wish to all the Readers, all, or at the least, equal Profit.

Plura quidem feci, quam quæ comprendere dictis In promptu mihi fit; Rerum tamen ordine ducar.

Interea Lector valeas, & memineris quod quicunque genuinum sensum ac vim alicujus legis commento aut techna illuserit, legis violator habendus eft.

reprehendet donec totum studiose perlegerit, unde forte fiet ut pauciora criminetur; Et utcung labor ifte totus fit meus: Lectoribus tamen fingulis, idque ex animo omne, aut faltem parem mecum fructum exopto.

Plura quidem feci, quam que comprendere dictis In promptu mibi fit; Rerum tamen ordine ducar.

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#### VERNON'S Case.

N a Writ of Dower brought by Mary Vernon against John Dyer 317. Pl. ?. Vernon, Esq; of the Manor of Sudbury in the County of pl. 247. Derby: The Tenant pleaded, that her Husband was also feifed of certain Lands in the fame County in his Demeln as of Fee, and by Deed indented thereof enfeoff d Sir Thomas will power Gifford, Knight, and others, and their Heirs to the Use of himself for the Term of his Life, without Impeachment of Wast, and after his Decease, to the Use of the Demandant then his Wife, for the Term of her Life; and after her Detale to the Use of the right Heirs of the Husband; and ever'd, that the faid Estate for Life limited to the said Deher Dower, and that after the Death of her Husband, the Demandant enter'd into the said Land so limited het Joynture, and agreed to it: To which the Demandant replied, and confessed the said Feossment, and the Limitation of the Uses, s. to the Use of the Husband for his Life Justinour Impeachment of Wast, and afterwards to the Use the Demandant, for her Life; but further said, that the Limitation to the Wife for Life, was upon Condition that J he should perform the Last Will of her Husband; and shewed all the Will in certain, in which divers Things were to perform'd by the Demandant, and demanded Judgment the Tenant should be admitted, and receiv'd to aver that Estate so limited to the Wife upon the said Condition, Bower; upon which Matter the Tenant demurr'd in Law :(a) Co. Lin 36.65

and in this Case five Points were resolv'd. 1. That by the Rule of the Common Law, a Rightor Title The I Point hich any one has to any Lands or Tenem, of any Estate of In- Doct. pla. 17. herit. or Freeho. can't be barred by Acceptan. of any Mann. of 2 Brownl. 132. (a) collateral

(a) Doc. plz. 17. (a) collateral Satisfaction or Recompence: as if A. dif-

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9 Co. 79. b. 1 Rol. Rep. 297. 2 Brown. 132. Dy. 91. pl. 12. (c) 6Co. 43.b. 44. 3 H. 7. 13, 20. Cro. El. 357.

Cro. Jac. 100.

feiles B. Tenant for Life, or in Fee, of the Manor of Dale, and afterwards gives the Manor of Sale to B. and his Heirs, in full Satisfaction of all his Rights and Actions which he has in or for the Manor of Dale, which B. accepts, yet B. may enter into the Manor of Dale, or recover it in any real can't be barr'd by any collateral Satisfaction, but by Release or Confirmation, or an Act which tantamounts, and therefore it is commonly faid in our Books, that (c) Accord with Satisfaction is a good Plea in Personal Actions, where Damages are only to be recover'd, and not in real Actions: Vide 13 H.7. 13, 20, Oc. And that was the Reason that no collateral Satisfaction or Recompence made to the Wife in Satisfaction of her Dower, was any Bar of her Dower by the Common Law : But Dower ad offium Ecclefia, or ex affensu Do.Lit.362.b. patris concluded her of her Dower, (d) if the enter'd into the Land so assigned, after the Death of her Husband; for

the Law allows them, being made in fuch Form as the Law requires, to be Dowers in Law. But if a Man in Consideration of a Marriage after to be had with A. makes an E. state of certain Lands to her for her Life, in full Satisfaction of all the Dower which after Marriage may accrue to her in any of his Lands, and after they intermarry, that was no

(e) Colingob. (e) Bar of her Dower at the Common Law for two Reasons; one, because the had no Title of Dower at the Time of the Acceptance of the Satisfaction, but it accru'd after: Secondly, because no (f) collateral Satisfaction can Bar any Right or

(1) Co. Lit.36,b.

Title of any Inheritance or Freehold, as has been faid, and thereby the Doubt in 29 E. 3. 3. is well refolv'd. So if the Husband purchases or causes an Estate to be made to him and his Wife for Life, or in Tail in full Satisfaction of her Dower, and dies, that was no Bar of her Dower at the Common Law, causa qua supra: So if after the Death of the Husband the Heir makes an Estate to the Wife for Life of any Land

( Co Lit. 34.b. (g) (whereof the is not dowable) in full Satisfaction of her Dower, that is no Bar of her Dower: Vide the Case now in (6) 1 Mar. Dyer the Reports of the Lord Dyer, (h) 1 Mar. 91. acc, & vide (i) 21. pl. 12, 13. 31 E. 3. Scire facias 99. Before the making of the Statute (A Co. Lit. 36.b. of 27 H. 8. cap. 10. the greatest Part of the Land in England Perk. sed. 410. was convey'd to fundry Perfons to Uses, and forafmuch as a Dyer 91. pl. 13. Wife was not dowable of (k) Uses, her Father or Friends

from his Feoffees, or others seised to his Use, to him and to his Wife before or after Marriage for their Lives, or in Tail, for a competent Provision for the Wife after the Husband's Death: Then comes the Statute of 27 H.8. which transfers the Possession and Estate of the Lands

upon her Marriage procur'd the Husband to take an Estate

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to the Ufe, by which the Hufbands were feiled accordingly and by Consequence it further Provision had not been made, the Wives would have as well their Dowers as their Joynwes for the Reasons aforesaid, and for this Reason the Branthes concerning Joyntures were added to the faid Statute of 27 H. 8. And therefore it was resolv'd, that if this Estate in the Case at Bar limited to the Wife, was not within the faid Act of 27 H.S. that by the Common Law it was no Barof the Demandant's Dower, but that the should have both.

Secondly, it was refolv'd, That if a Man makes a Feoff. The 2 Point ment to the Use of himself for Life, (a) and afterwards to (a)Dyer340.plso the Use of his Wife for her Life, for the Joynture of his Wife, that such Estate in Remainder is within the Intent of the said Act of 27 H. 8. For altho' the Statute expresses particularly these five Forms, 1. To the Husband and Wife, and to the Heirs of the Husband; 2. To the Husband and Wife, and to the Heirs of their two Bodies; 3. To the Husband and Wife, and to the Heirs of the Body of one of them; 4. To the Husband and his Wife for their Lives; 5. To the Husb. and Wife for the Life of the Wife; and yet many other Estates not there expressed are within this Act, for the faid particular Forms are put but for (b) Ex- (b) Lie. Sect. 21. amples, and not to exclude any other Estate, which is to Cro. Car. 533. fuch Effect, and agrees with the Intent of the Makers of the 2 Inft. 311, 3344 Act; and altho' it was objected, that all the Examples ex-Yelv. 176. press'd in the Act are of a joynt Estate made to the Husband and Wife, and none of them to the Wife only, nor by way of Remainder; and altho' by a Proviso in the same Act, it is provided, That if any Wife shall have any Manors, Lands, ec. unto her assur'd after Marriage, for Term of her Life, or otherwise, in Joynture, &c. so as the Letter of the Act imports a joynt Estate, and that this Word Junctura implies a pynt Estate, and that the Dowers of Women are much favourd in Law; yet it was resolv'd, that all is of one Effect to the Wife, to limit an Estate to the Husband and Wife for their Lives, (c) and to the Husband for his Life, the (c) Deer 340. Remainder to the Wife for her Life; for the one Estate is place beneficial to the Wife as the other; vide after the Case of (d) Albion as to this Point. But it was refolv'd, that the (d) Poster a bi Mate which by Force of this Act shall be in lieu and Bar of her Dower, ought by the Limitation thereof to take Effect (e) immediately after the Husband's Death, for that plain- (e) Co. Lit. 36.b. I appears by all the Examples expressed in the said Act, wat the Estates of the Wives shall take Essect immediately after the Death of their Husbands; and therefore (f) no other () the 400 The not express in the Act, shall be taken by the Equity of the At, unless it has the same Beginn. for the Benet. of the Wives,

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(a) Winch. 93. Hutt. 51. Hutt. Argument 49. Cro. Jac. 489. Cawly 213, 214 Co. Lit. 36. b. Moor 903. 1 Sid. 3, 4. (b) Mob. 151. Winch 33.

(c) Hatt. 51. Cawly 214. 2 Co. 55. b. 8 Co. 135. b. 10 Co. 62. 2. Cro. El. 585.

( Antea 1. 2.

The 3 Point (b) 1 Leon. 311. Lyer 317. pl-7. Cr. El. 451, 452. Poftca 3. 2. Moor 31.

as the Examples purport : And therefore if the Husband makes a Feoffment in Fee to the Use of himself for Life, (a) and afterwards to the Use of B. for his Life, and afterwards to the Use of his Wife for Life, for her Joynture, it is not within the Act, altho' B. dies, living the Husband so if the Husband makes a Feoffm. in Fee to the Use of A. for his Life(b) and afterw. to the Use of his Wife for her Life, for her Toyntu. it is not within the Act, altho' A. dies living the Hufb. For in these, and other like Cases, forasmuch as at the Time of the Limitation of the Estates they were out of the Ast. because it was not certain that the Estate of the Wife would take Effect immediately by the Death of the Husband, as it ought by the Act, no subsequent Event can make them within the Act. For (c) quod ab initio non valet, in tractu temporis non convalescet; & (d) que malo sunt inchoata principio, vix eft ut bono peragantur exitu: And therefore in all the faid and the like Cases, altho' the Wife attains to them, and enters and takes the Profits, yet she shall have Dower of the Refi-Co. Lit. 35.2. due. For if the said Act doth not bar her, (e) the Common Day. 32.2. a. Bulft. 304,305. Law, as has been said before, will not conclude her in such a Bulft. 192. Case of her Dower. And the Ld. Dyer said, that it was ad-(d) Bullt 193. 193 judged in Q. Mary's Time, that where the D. of Somer set pur10 Co. 78. 2. chased Lands to him and to the Dutchess his Wife, and to
(e) Co. Lit. 36.b. the Heirs Males of their two Bodies, that altho' it was not the Heirs Males of their two Bodies, that altho' it was not any of the Estates put for Example in the said Act, yet it was adjudg'd, that it was within the Intent of it, which Case you (1) Dyer 96. pi. 42. may fee in the L. Dyer's Rep. 1 Ma. 96. (f) Alfo the L. Dyer The Durchels of faid that it was refolv. in the Time of Q. Eliz. that where one Somerser's Case. Ashton in Performance of Covenants of a Marriage to behad Maria Dyer 96. between his Son and one A. made a Feoffm. to the Use of A. for her Life, for her Joynt. and afterw. they intermarried, and the Husband died, it was a Joynture within the Intent of the Act, and yet all the five Examples are of Estates made to the Husb. and Wife: But in the faid Cafe of Albton, the Estate was made before (g) Marriage, so that there was not any Hub! Advon's Cafe, or Wife at the Time of the making of the Line, and the Advon's Cafe, or Wife at the Time of the making of the Line, and Mich. 6 & 7 Eliz. State was only to the Woman, where all the Examples are of Mich. 6 & 7 Eliz. State was only to the Woman, where all the Examples are of Mich. 6 & 7 Eliz. State was only to the Woman, where all the Examples are of Mich. 6 & 7 Eliz. State was only to the Woman, where all the Examples are of Mich. 6 & 7 Eliz. State was only to the Woman, where all the Examples are of Mich. 6 & 7 Eliz. State was only to the Woman, where all the Examples are of Mich. 6 & 7 Eliz. State was only to the Woman, where all the Examples are of Mich. 6 & 7 Eliz. State was only to the Woman, where all the Examples are of Mich. 6 & 7 Eliz. State was only to the Woman, where all the Examples are of Mich. 6 & 7 Eliz. State was only to the Woman, where all the Examples are of Mich. 6 & 7 Eliz. State was only to the Woman, where all the Examples are of Mich. 6 & 7 Eliz. State was only to the Woman, where all the Examples are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only to the Woman are of Mich. 6 & 7 Eliz. State was only t Dy. 228-pl-46,47. a joynt Estate, but all is of one Essect, which Case you may ice M. 60 7 Eliz. Dyer 228.

Thirdly, it was refolv'd, that altho' the Estate limited to the Wife was upon Condition, and altho' Dower (in lieu of which the Joynture comes) at the Common Law was an absolute Estate for Life, yet forasmuch as an Estate for Life upon Condition, is an Estate for Life, it was within the Words and the Intent of the Act, if the Wife after the Death of her Husband (i) Co. Lit. 36. b. accepts it; for it was agreed that a Joynture is a (i) competent Police 3. a. Livelihood of Freehold for the Wife to take Effect immediately Livelihood of Freehold for the Wife, to take Effect immediately after the Death of the Husband, for the Life of the Wife, if she herself is not the Cause of the Determination or Forfeiture of it; and therefore if the Husband

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makes a Feoffm. in Fee to the Use of his Wife, (a) for (1) Hob. 40.152 another's Life, for her Joynture, it is not within the Act, for the Estate is not for the Wife's Life, and it may determine without her Act or Default, during her Life, and thereby the will be destit. of a Livelihood: But if a Man makes a Feoffm. in Fee to the Use of hims, for his Life, and after to the Use of his Wife (b) durante viduitate fua for her Joynt, that is an Estate (b) Dyer 17-pt.7. to her for her Life, and it can't determ. without her own Act, 30.2. and theref. it is a Joynt. within the faid Act. The same Law of an Estate made to the Wise for her Life upon (c) Con-(c) Antea 2 b. dition, for if she does not break the Condition, it is an E-1 Leon. 311. state to her for her Life. And in the Case at the Bar, if the Cr. El. 4513452 Condition binds her to any unreasonable Thing, the might Moor 31. have wav'd it, but when the after the Death of her Hulband, enters and accepts the conditional Estate for her joynture, the

is barr'd of her Dower.

Fourthly, it was resol. that if a Joynt. is made to a Woman The 4 Point (d) before Marriage, after the Husband's Death, the Wife (d) Co.Lin. 36h can't wave it, and take her Dow. as she may of a Joynt. made to her during the Marriage, and that by Force of the faid Proviso, the Effect of which is, that if any Woman hath any Manors, Lands, Tenem. or Heredit. affur'd to her (e) aft. Marr. (e) Co. Lin. 36.16. for Term of her Life, or otherw. in Joynt. Oc. that the after plowd. 306. b. the Death of her Hulb. shall have Lib. to refuse it; by which Dyer 61. pl. 31they resol. that if the Joynt.was made before Marriage that the Goldib. 84, 85. Intent of the Makers of the Act was, that the should not refuse, but should take such Joynture as was made to her. Vide the Case of Ashton put before as to this Purpose. And it was said, if Lands are convey'd to a Wo. bef. (f) Marriage for Part of (1) Co.Lin.36.b. her loynt, and after Marria, more Land is convey, to her for o her full Joynt, and in Satisfaction of her whole Dower, and (8) Co.Lin.36.b. afterw. the Husb. dies, in that Case if the Wife waves the Land convey'd to her Use after her Marriage she shall have the Land onvey'd to her before the Marriage, and her Dower also in the Residue; for Land convey'd to a Woman (g) in Part of her Joynture, or in Satisfaction of Part of her Dower, is no Bar (for the Uncertainty) of any Part of her Dower. if the Debtor gives the Creditor an Horse or any other Thing in Satisfaction (h) of Part of his Debt, it shall be a Bar for no (4) Dock plants Part for the Uncertainty. Also the Words of the Act are, for the Joynture of Wives, and not for Part of their Joyn-

Fifthly, it was resolv'd, that altho' in the Case at Bar The 5 Point the Estate of the Wife was upon express Condition to perform his Will, which imports a Confideration of the making of the Estate, yet it may be (i) averr'd to be for the (i) Owen 33-Joynture of the Wife, for the one Confideration stands well 2 And 46,47. with the other, and altho' it is not express'd in the Deed, yet it may be averr'd, as the L. Dyer faid it was adjudg'd in the like

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tomoorags. Sos. Cafe between Villers (a) and Beaumont, in the Time of Q. Co. 176. 2. Mary, which you may now see in his Rep. 4 & 5 Phil. & Mar. B. N. C. 182. N. 146. And in the Case at Bar the Case is stronger, because the 46, 47. 2 Roll. Averment-is given by the said Act of 27 H. 8. by the Words 781. 3 Inst. 672. In the Act, For the Joynt. of the Wife; and in this Case Owen 33. Raym. in the Act, For the Joynt. of the value, Br. Dower 69. was 27. 50. Bendle in the L. Dyer said that the Case of 6 E. 6. (b) Br. Dower 69. was Kelw. 208. Co.51-2.7 Co. misreported, for true it is, that it was resolved, that an Estate 39.2. 11 Co.25.2 in Fee simple conveyed to the Wife, was no Joynture Cart. 140. Palm.

214,215,506,507. Within the Stat. but that is to be intended within the Stat. of 2Rol. Rep. 68.

(b) Dyers 17, pl. 7.

(c) 11 H. 7. 20. which restrains the Alienations of Women, which Act neither in the Letter nor in the Meaning can be Dyer 238, pl. 78. intended when a Woman has an Estate in Fee simple; for Co. Lic. 326. b. to restrain (d) such Estate that it shall not be aliened, is rean Estate in Fee simple; for Luch Estate that it shall not be aliened, is read a sold, \$H.7.10.b shall not be aliened, is read a sold, \$H.7.10.b shall not be aliened, is read a sold, \$H.7.10.b shall not be aliened, is read a sold, \$H.7.10.b shall not be aliened, is read a sold, \$H.7.10.b shall not be aliened, is read a sold, \$H.7.10.b shall not be aliened, is read and study of the shall not shall not shall not shall not shall not shall not shal Hob. 170. (c) Co. Lir. 36,b. is no Joynture within the faid Act of 27 H. 8. is because such Antea s. b. Joynture is not mentioned in the Statute but that is no Reafon in Lawfor 3 Reasons. 1. Because the principal Case at Bar, and divers other Cases put before were out of the Words of the A&, and yet were within the Equity and Intent of the A&. 2. It agrees with the Descrip. of a Joynt. agreed and resol. befo. 3. He faid, this Estate in Fee simp. was within the express Let, of the Act, for the Words of the faid Provisonre; for Term of Life, or otherwise in Joynture, which Word (otherwise) extends to all other Estates conveyed to the Wife not mentio. befo.in the Act, which are as, or more, beneficial to the Wife than the Estates beforemen. for all other Estates which are as benefici. to the Wife, or more, as the Estates ment. in the Act, are within this Word (otherwise.) For nota, this Word (otherwise) is not indefinite; but otherwise in Joynt. id eff for a Joynt. which is as much as to fay, otherwise, having all the Effect of the Incidents to a Joynt, implied in the faid five Examp, or more: And if an Estate for Life, in Tail, or Fee simp. is convey'd to the Wife for her loynt, and after the Death of the Husb. she is evicted, the shall recov. Dow. to the Value in the Residue, and shall have but an Estate for Life, of what Estate soever her Joynt is by an express Proviso in the said Act of 27 H. 8. So that upon Evict. no greater Prejudice shall accrue to the Terre-tenant, if the Joynt, is of any Estate of Inheritan, than if it was but only

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for Term of her Life, And afterwards Judgment in the principal Case was given against the Demandant. Nota Reader. in the faid Case reported by the Lord Brook, it is further said, That a Devise (a) of Land by the Husb. to the Wife by Will, (a) Moor, 31. is no Bar of her Dower, for it is a (b) Benevolence, and not a (b) B. N. C. 431. Joynture, per Jufticiar' as it is there reported; and that is good Dyer 248. pl. 78law, if it is well understood. And as to that some have said, That no Estate devised by. Will can be a Joynture within 27 H. 8. for two Reasons. 1. That by the said Act of 27 H. 8. the whole Estate of the Feosfees was transferr'd to Cestuy que use, and per consequens no Land after the making of that Act was devisable 'till the Stat. of 32 H. 8. and theref, a Devise of Land, which then by the Law could not be made, can't be within the faid Act of 27 H. 8. The other Reason was, because every loynture intended within the Act of 27 H. 8. is made and affur'd either before, or during the Coverture, as appears by the said Act, but a Devise takes its Effect after the Husband's Death: But that neither of these is any Reas. in Law, appears by the Resolution following, Mich. 38 0 39 Eliz. between Leak and Randall in the Court of Wards, it was resolved Mich. 38. 2 30. by the two Ch. Justic. & tot' Cur' That if a Man devises Land Eliz. inter Leak and Randall, in to his Wife for Term of her Life (c) generally, it can't be a- Curia Wardoverred to be for the Joynt. of the Wife, and in Satisfaction of rum her Dower for two Reasons. 1. Because a Devise implies a Con-winch. 100. fiderat. in itself, and theref. as a Devise can't be averr'd to be Cawly 244 to the Use of another, than of the Devisee, unless it is express'd in the Will, no more can a Devise be averred to be for a Joynture, unless it is so express'd in the Will. But as it is faid in the faid Case of 6 E. 6. it shall be taken for a Benevo- vir of down lence, and so is the faid Case of 6 E. 6. to be intended. 2. The good, if whole Will concerning I and he she Secure of the good, if where whole Will concerning Lands by the Statutes of 32 0 34 H. 8. ought to be in writing, and no Averment ought to be taken out of (d) the Will, which can't be collected by the Words (d) 5 Co. 68. a contain'd in the Will. But if a Man devises Land to a Wo-Lach 42. Jenk. Cent. 115. Cro. man for Term of her Life, or in Tail, &c. for her Joynt. and Eliz. 498. Mo. 222. in Satisfact. of her Dower, it was resol. that it is a Joynt. with Bridg. 135. in the Act of 27 H. 8. for as an Estate for Life made to a Wo-Godb. 432. Lit. man for her Joynt. before Marria. when she is not his Wife, is Rep. 188. Hutt. within the Equity of the faid Act, fo an Estate for Life devis. Raym. 410, 411. to a Woman for her Life, which takes Effect after his Death, 2 Lcon. 70. when the Marriage is dissolv'd, is also within the Equity of the faid Act, for such Estate well agrees with the Intent of the Makers of the faid Act of 27 H. 8. and with the faid Description of a Joynture made by the Justices in the said Case of Vernon. And altho' Land was not devisable 'till 32 H. 8, yet it is (e) Plowd.127.35 frequ. in our Books, that an Act made of (e) late Time shall be 82. b. 2 Inst. 35. taken within the Equit. of an Act made long Time bef. As the 2 Brown 1. 115.

Devise, in esters efter des

Sta- Cro. Eliz. 177.

Statute of Marlebridge, which was made Anno 52 H. 3. gave the Wardship of the Heir of the Tenant who held by Knights Service, notwithstanding a Reoffment made by Collusion, at which Time, and by 200 Years and more, that is to fay,

(a) 13 H.7.19.20 the Stat. of (a) 4 H. 7. c. 17. which gave the Wardsh. of the Heir of Cestuy que use, the Heir of Cestuy que use was not in Ward; and yet ir is held in 27 H. 8. 9.a.b. that if Coffuy queufe after the Statute of (a) 4 H. 7. makes a Feoffment in Fee by Collusion to defraud the Lord of his Ward, it is taken within the Equity of the Stat. of Marleb. Also the Stat. de Donis

(6) Plowd. 127.4. in Tail with Assets, is taken within the (b) Equity of the Stat. 178.b. 8Co. 52.b. of Gloucester, c. 3. made anno 6 E. 7. 28 it is held in a Plant of the Stat. garr. Stath. O 43 E. 3. 23. b. For Formedon in Discender was given in lieu of a Mortdancester. So the Stat. of W. 2. cap. 25.

made 13 E. 1. gave a Certificate, but gave no Adjournment, but (c)Fitz. Adjorn-3 (c) Adjournment is taken by Equity of the Statute of Magna Charta, cap. 13. made 9 H. 3. as it is held 12 H. 4. 9. b. So

the Statute of 7 R. 2. gave Affife in confinio Comitatus; and (d)Co.Lit.154.2. (d) Reddissein taken by Equity of the Statute of Merron, c. 3. 2 Inst. 82, 83. made 20 H. 3. Vide 1 E. 3. 25. b. & 12 Eliz. Dyer 289. The (e)Dyer 289. 290. Bishop (e) of London being one of the High Commissioners, (d) Reddiffeifin taken by Equity of the Statute of Merton, c. 3. by Force of the Act of I Reg' Eliz. was translated to the Archbishoprick of York, yet his Authority remain'd by Force of the

Act made anno I E. 6. cap. 7. and with this Resolut. (f) in Leak's Case aforesaid agrees the Case reported by the L. Dyer (d) Dyers20.pl.12 5 Reg' Eliz. 220. (g) A Man seised of certain Land in Fee, held in Socage, and of other Land in Tail held in Capite, devised by his Will in Writing the third Part of all his Lands to his Wife in Recompence of her Dower, and dy'd; the Wife entred into the third Part of the Land in Fee simple; and it was resolv'd, that it should be a Bar of her Dower by the said A& of 27 H. 8. in Curia Wardorum. Nota Reader, a good Difference, and all the Opinions, which feem to dif-

agree, well reconcil'd. Know Reader, that by fubtil and finister Counsel, an E. valion out of the said Act of 27 H. 8. (as was intended) was devised, How Women might have Joyntures and Dowers also notwithstanding the said Act, and the Invention was such: One Christian who was the Wife of one Richard Melles of the County of Suffolk, had a Joynture made of an House and certain Land in Stoke Naylond in the County of Suffolk, to her Husband and her, and to the Heirs of the Body of the Husband, by one John Melles, Uncle of the faid Richard; which Richard was feifed in Fee of divers other Lands in the same Town, and afterw. Rich. dy'd; the Wife with certain of her Friends of her Confederacy, in a fecret Manner entred into the faid Tenements convey. to her, and claim'd them for her Joynt. and yet wav'd the Possession, and brought a Writ of

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Dower to be endow'd of the whole, as well of that which was affigued to her for her Joynture as of the Refidue of her Hulband's Lands and Tenements, and had a full third Part of the whole (accounting the Land convey'd to her for her Joyn. to be Parcel) affign'd to her by the Sheriff for her Dower (not knowing the Practice) only out of the Refidue : And when the had her Dower, then the openly entred into the House and Land convey'd to her for her Joynt. who was held out by The. Purflow, the Ferre-tenant, and afterwards the marry'd one John Sharp, who brought an Action of Trespass against the faid Tho. Purlow, for a Tresp, done to Juni, anno 18 Eliz. in the House and Land conveyed in Joynture. And Pur flow, by the Advice of one of the Inner-Temple pleaded the Feoffm. of the faid Rich. to him and justify'd,. To which the Plaintiffs reply'd, that before Richard had any thing, the faid John was feifed, and gave to her Hulband and her ut supra. To which the Def. repyn'd, that the Estate made to Richard and Christian was for the Joynt. of Christian, and that after the Death of her Hulb. and before the Tresp. the brought a Writ of Dower against the Def. then Tenant of all the Land whereof her Husband was seised, and demanded the third Part of all recover'd, and had Execution out of the Refidue, and averred, that the House and Land which was Parcel of the Land convey'd to her for her Joynture, was no Part of the Land affign'd to her for her Dower. To which the Plaintiffs furrejoyn. that the faid Christi. after the Death of her Husband, and before the Writ of Dower brought, enter'd into the faid House, claiming it for her Joynt. To which the Def. by way of Rebutter said, That to say that the said Christian after the Death of her Husband, and before the Writ brought, had entred, they should not be admitted against the said Record of Recov. in the said Writ of Dower: Upon which the Plaintiffs demurr'd in Law, and it was argued by the Plaintiff's Counfel, that first, this bringing of the Writ of Dower, can't be any Wayver of the Estate of the Wife, because by the Entry of the Wife, she has agreed to the said Estate, and was actually seised; and therefore she can't afterw, wave and divest it out of her by the bringing of the said Writ of Dower. To which it was answ. by the Def. Counsel, That admitting the Wife could not wave it, yet she might well bar and conclude herfelf from claiming the faid Estate, in this Cafe the has (a) estopped herf. to claim any Estate in the House (a) 1 Roll. 862. and Land, in which &c. For when the brings her Writ of Dower, and has (b) Judgment to have the 3d Part of the whole, (b) Cr. Eliz.128. by that the affirms, that the has only Title of Dower, and per 138. Owen 134. consequens no Estate, ergo she is estopped to claim any Estate, many Part of that whereof the has demanded by her Writ to be endowed; as if the Husband discontinues the Wife's Land, and dies, and the Wife brings a Writ of Dower

against

(a)Owen 154. F. N. B. 194. b.

(6) 1 Roll. 862.

against the Discontinuee, and recovers the third Part, she is thereby estopped to bring a (a) Cut in vita, for by her Writ of Dower she claim'd Title of Dower only, and thereby she shall be estopped to claim any other Right by Cui in vita: Vide 10 E. 3. Double Plea 8. 20 E. 3. Sorre fac' 13. F. N. B. 194 17 Aff. 3. Acceptance of Dower by Deed indented, concludes the Wife of her Right, vide 11 H. 7. 20. b. So if the had brought her Writ of Dower to be (b) endow'd of the Residue only, and had recover'd her Dower thereof, she should be estopped to claim any Estate in the faid House and Land fo convey'd to her, altho' she had entred before; for by the bringing of her Writ of Dower to be endowed of the Residue, she has tacite affirm'd, that she has not agreed to any Joynture made to her; for then she can't bring any Writ of Dower by the faid Act of 27 H. 8. And if the Law should be otherwise, great Inconvenience would ensue, which by no Industry or Policy can be prevented, as appears before: And for these Reasons it was concluded, That the Plaintiffs were in any Case concluded from claiming the said House and Land in which, Oc. Quod fuit concessum per Sir Chriftopher Wray, Chief Justice, Sir Thomas Gawdy, & totam Curiam. Nota Reader, Simplicitas est legibus amica, & (c) nimia subtilitas in jure reprobatur.

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## Michaelis 27. & 28. Eliz. Regina, Rot. 1739.

#### BEVILL's Cafe.

MIcholaus Frauncis attachiatus fuit per breve Dom. Re-Cornub f. gin' de secunda Deliberatione, ad respondend' Waltero Parker de placito quare cepit averia ipsius Wal. & ea injuste detinuit contra vadios & pleg. &c. Et unde idem Walter per Franciscum Eyrman Attornatum suum queritur quod præd' Nicholaus tricesim' die Octob' anno regni dom' Regin'nunc quinto decimo, apud Tallan in quodam loc' voc' Newton, cepit averia, videl. duos Boves ipsius Walteri, & ea insuste detinuit, contra vadios & plegios quousque, &c. unde dic' qd' deteriorat' est, & dampn' habet ad valenc' viginti librar'; & inde produc' sectam, &c. Et præd' Nicholaus per Willihelmum Leigh attornat' fuum venit & defendit vim & injuriam quando &c. Et ut ballivus Johan' Bevill armiger, bene cogn' caption' averiorum prædictorum in præd' loco in quo &c. Et juste &c. Quia dicit quod idem locus vocat' Newton in quo supponit' captionem averiorum prædictorum fieri, continet & prædict' tempore Captionis averiorum prædictorum superius heri supposit' continebat in se vigint' acras terræ cum pertin' in lallan præd' quodque din ante præd' tempus quo &c. quidam Robertus Smith senior armiger fuit seisit de eisdem viginti acris terræ cum pertinen' in dominico suo ut de feodo, & ealdem viginti acras terræcum pertinen' tenuit de præfat' Joh' Bevill ut de manerio suo de Keligath in com' præd' per servicium militar', videlicet per homag', fidelitatem, & ad scutagium dom' regin' cum acciderit quadragint' duos folidos, & ad plus plus, & ad minus minus; ac etiam per Servic' faciendi sectam ad Curiam ipsius Johannis Bevill maner' sui prædict' bis Perannum, viz. semel infra unum mensem proxim' post festum Sancti Mich' Archangeli, & iterum infra unum mensem prox post festum Pasch' quolibet anno apud manerium illud te-

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nend' de quibus servic' prædict' Johan' Bevill suit seisit' per manus præd' Rob' Smith senioris, ut per manus viri tenentis fui, viz. de homagio, fidelitate, scutagio, & sect' cur' ut de feodo & jure : Posteaque prædictus Robertus Smith senior, obiit de prædictis viginti acris terræ cum pertinentiis seisit post cujus mortem prædict' viginti acræ terræ cum pertinentiis descend' cuidam Roberto Smith, ut filio & Hæredi prædicti Roberti Smith, per qd' idem Robertus Smith filius ante præd' tempus quo &c. in præd' viginti acras terræ cum pertinentiis intravit, & fuit inde seisit' in dominico suo ut de feodo. Et quia homagium prædict' Roberti filii prædicto tempore quo &c. præfat' Joh' Bevill aretro infact' fuit, idem Nicholaus ut Ballivus ejusdem Johannis Bevill bene cogn' captionem averior' prædict' in præd' loco quo &c. Et juste &c. pro homagio illo fic infacto ut in terris de ipfo Johanne in forma prædicta tent' &c. Et super præd' Robertum filium, ut super verum tenen. tem prædiet' Joh' Bevil, & infra feodum & dominicum fuum &c. Et prædict' Walterus dic', qd' diu ante prædictum tem. pus captionis averiorum illorum fact', prædictus Rob' Smith filius fuit feisit' de præd' viginti acris terræ cum pertin' in Tallan prædicta vocať Newton, in dominico suo ut de seodo: & fic inde feifit' existens, ante prædictum tempus captionis prædict' fact, scilicet vicesimo quarto die Januarii anno regni dominæ Reginæ nunc tertio decimo, apud Tallan præd' inter alia dimifit prædict' viginti acras terræ cum pertinent' eidem Wait' habend' eidem Waltero & affign' suis a prædict' vicesimo quarto die Januar' an' supradiet', usq; finem termin' quinque annorum extunc prox' fequent' & plenar' complend'; virtute cujus dimission' idem Walterus in præd' viginti acras terræ cum pertinen' intravit, & fuit & adhuc est inde possession', reversion' inde post terminum prædictum finitum præfat' Rob' Smith filio & hæred' fuis spectan' fine quo quidem Robert' filio idem Walter' non potest præf. Nicholao ad cogn' suam præd' respondere, nec placitum inde in judicium deducere : Et petit auxilium de præfat' Roberto Smith filio, qui presens est bic in cur' in propria persona sua, & gratis se jungit pratat Waltero in auxilium versus præfatum Nicholaum de præd placito &c. Et super hoc tam idem Walterus quam pradiel' Robertus Smith filius, qui &c. dic' quod prædictus Nicholaus ration' preallegat' captionem averiorum prædictorum in præd loco in quo &c. justa m cogn' non debet, quia protestando qd' prædictus Robertus Smith filius præd' tempore captionis averior præd' fæd', non ten' præd' vigint' acras terræ cum pertin' voc' Newton in Tallan præd' de præfat' J. Bevill, ut de maner fuo de Keligathper fervicium militar', viz. perhomagium, fidelitatem,

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liztem, & ad scutagium dom' Regine cum acciderit 425. & ed plus plus, & ad minus minus, &c. Nec non per servitium faciendi fectam cur' ipfius J. Bevill manerii fui præd' bis per an' viz. femel infra unum menfem proxim' post festu' S. Michaelisarchangeli, & iterum infra unum mensem proxim' post festu' Pasch, quolibet anno apud maner' illud tenend' prout præd Nich' fuperius allegavit: Pro placito dic' qd' præd' J. Bevill nunquam fuit seisitus de præd' servitiis, prout prædict' Nic' superius allegavit. Et hoc parati sunt verificare, unde ex guo præd' Nich' captionem averiorum prædict' in præd' loco in quo, &c. fuperius cogn' idem Walter & præd' Rob' qui &c. pet' judicium, & dampna fua occasione captionis & injusta detentionis averior' præd' eidem Walt'adjudicari. Et præd' Nich' ut prius dic' qd' præd' I. Bevill fuit seisit' de præd' servitiis per manus præd' Rob' Smith patris ut per manus veri tenentis sui, prout ipse superius allegavit. Et de hoc pon'se super pr'iam, & præd' Walt' & Rob' Smith, filius, qui &c. similiter. Ideo præcept' est vic' qd' venire fac' hica die S. Mart' in 15 dies, 12, &c. per quos &c. Et qui nec &c. de recogn' &c. quia tam &c. Profess' cont' jur' ad triand' exit' præd' continuatur ufque quindenam Pascha, anno 19 Eliz. Reginz, nisi Justic' ad affishs in com' præd' capiend' affign' per formam statuti &c. die Lunz in quinta septimana quadragesimz eodem anno 19, prius venissent, ad quas quidem assisas veredie reddit' fuit ut sequitur. Jur' dic' super sacrament fuum, quod infranominatus Robertus Smith pater tenuit tenementa infrascript' cum pertinentiis vocata Newton de infranominat' I. Bevill, ut de infraseript' manerio de Keligath per servitium militare infrascript'. Et qd'idem J. Bevil, fuit seisit' de fidelitate & sect' cur' tantum parcel servitior infras per manus præd' Rob' Smith patris ut per manus veri tenentis sui : Sed utrum præd' seisin' fidelitatis & sed' cur' præd' sit bona & sufficiens seisina integror' sevitior' infrascript' necne, iidem jur' penitus ignorant, & pet' inde advisament' & justic' præd'. Et si super tota materia præd' in forma præd' comperta, videbitur eisd' justic' qd' præd' seisin' fidel' & feet' cur' non fit bona & fufficiens feifina integror' fervitior' præd' tunc iidem jur' dic' super sacramentum suum qd' præd' I. Bevil non fuit seisit' de infrascript' servitiis per manus præd' Rob' Smith patris ut per manus veri tenentis lui, prout præd' Walt' interius allegavit, & tunc assid' dampna iphus Walt' occasione caption' & injusta detention' aver' inmi, ultra mis & custag' sua per ipsum circa sect' suam in hac parte apposit' ad duodecim denar', & pro mis. & custag' illis ad quadraginta folidos, & si super tota materia prædicta.

in forma præd' compert' videbitur eisdem justic' qd' eadem feifina de fidelitate & feet' cur' præd, fit bona & fufficiens feifina integror' fervitior'infraf tune tidem Jur' die fuper facrament'fuum præd' qd'præd' J.Bevill fuit feisit' de servit' infras per manus præd' R. Smith patris ut per manus veri tenentis sui prout præd' Nic. interius allegavit, & tunc assident dampna ipfius Nic. occasione pramiss ultra mis & custag' sua per ipfum circa sectam suam in hac parte apposit' ad 12 d. & pro mif & cuftag' illis ad 40 s. Et quia Justic' hic se advisare vo. dies dat' est partibus præd' hic usq; in crastino Sanet' Trinit' de audiendo inde judicio suo, eo qd' iidem just' hic inde nondum &c. Et sic placitum præd' continuat fuit usq; crastinum Sanct' Trinitat' anno 25 Eliz. Reginz: Quo die judicium redit' fuit ut sequitur ; ad quem diem hic ven' tam prædiet' Walterus Parker per attorn' suum præd', quam præd' Nich' Frauncis per Will' Aylesbury attorn' suum, & super hoc visis præmiffis, & per justic' hic plene intellectis, videtur justic' hic qd' præd' feifin' fidelitatis & fect' cur' præd' eft bona & fuffici. ens seifina integrorum servitiorum præd': Ideo concess'estqd' præd' Walt' Parker nihil capiat per breve suum præd'sed sit in mi'a pro falso clamore suo; & pred Nich' Frauncis eat inde fine die. Et habeat retorn' averior' przd' detinend' fibi irreplegiabl' imperpetuum &c. Concessum est etiam qd' prædiet' Nich' Frauncis recuperet verf præf' Walt' Parker dampna fuz præd' ad 41 s. per jur' præd' in torma præd' affeffa; necnon 131, eidem Nich' Frauncis ad requisitionem suam pro mis & custagiis suis prædict' per cur' hic de increment adjudicat': Que quid' dampna in toto se attingunt ad 15 l. & 1 s. &c.

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### In Replegiare in Communi Banco, Michaelis 17 & 18 Eliz. Rot. 1739.

#### BEVILL's Cafe.

Def. for taking of his Cattle in Tallan in the County of Cornwall, in a Place call'd Newton; the Defendant made Conusans as Bayly to John Bevill, Esq; by Reason that the Place where, Oc. contain'd 20 Acres, whereof one Robert Smith was seised in Fee, and held them of the said John Bevill, as of his Manor of Keligath in the said County, by Knights-Service, viz. by Homage, Fealty, and Escuage, scil. when Escuage runs to 40 s. 40 s. and when to more, more, and when to less, less, and by Suit of Court bis per annum, of which Services he was feifed by the Hands of the faid Robert Smith, as by the Hands of his very Tenant, and made Conusans for Homage: And Issue was taken that the said John Bevill nunquam fuit seisitus de prad' servitiis, prout the said Nithat the faid John Bevill was seised of the Fealty only, &c. And if the Seisin of Fealty was a sufficient Seisin of all the Services was the Doubt, which the Jurors referr'd to the Consideration of the Court. And this Point was made one of the principal Points in the Serjeants Case, which was argu'd by Popham, Rhodes, Fenner, Shute, and Gawdy, Serjeants, and Windham and Anderson the Queen's Serjeants. Pasch. 21 Eliz. the Record and Pleading of which Serjeants Case is entred, Hill. 20 El. Rot. 1745. And this Case at Bar was many Times argu'd in the Time of Sir James Dyer, and after his Death, after many Arguments at the Bar and Bench, was adjudg'd, by Anderson Chief Justice, Mend, Windham, and Periam, That the Seisin of the Fealty was (a) Co. Lit. 68.2 (a) Seisin of all the said Services, and therewith agree Br. Avow. 24,52. 4 E. 3. 11. b. 8 H. 6. 16. and the Reason was, That when the Fitz Avow. 71. Tenant postes 8. b.

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Tenant does Fealty, he takes a corporal Oath, that he will be Lie 67. b., the Tenements which he claims to hold of him; and that he will lawfully do the Cuffoms and Services which he ought to do. 1) 44 E. 3. 11.b. Services) is formicient (b) Seisin of all. And true it is that Line in the services of the s theren fays, That Homage is the (c) most Honourable Ser. way, vice, and the most humble Service of Reverence that a Freeholder can do to his Lord: But also it is true, that Fealty is a more (d) facred Service than Homage; for that is done upon Oath, and the other not; And it is to be observed, That these Words feil. (will be faithful and true to him, and Brownl 99. bear Faith to him for the Tenements which he claims to hold of him) are also Parcel of the Words in doing of the Service of Homage, and Seisin of Part of any Service is Seisin of the whole, as after appears. And that is the Reason that the Law makes fo great Account of the Seisin of these Services of Homage and Feaky; for the Seisin of them (because it is the Seisin of all other Services) is so inestimable in Law. that no Diffress for them of any Goods or Chattels (of what (2) a E 3. 26 2. Value foever) is in Judgment of Law, (e) excessive; and al-Aff. 31. tho the Lord often distreins for them, so that the Tenant Aff. 31. Distr. 34, 36. can't till his Land, yet the Tenant shall not have Affise de

Rol. 674. 12. Avow. 250. Brownl. 90. 1 Co. 44. 2. inch. 31. H. 7.15. 2. Lit. 153. 2.

Int. 106, 107. multiplici districtione, as he shall have for Rent or other Profits. Vide 28 Aff. 50. 11 H. 4. 2. a 42 E. 3. 26. a. Br. Di-Brefs 80. And in this Cafe these Points were also resolvid. 1. That Seifin of fuperior Service is (f) Seifin of all inferior Do Co. 25: 2. Services which are incident to it; as Seifin of Escuage is Sejfin of Homage and Fealty, and Seisin of Homage is Seisin of Fealty, and Scifin of the Rent is Seisin of the Fealty where the Seignory is by Fealty and Rent, Vide 3 E. 2. A-19 E. 2. Avoury 224. 7 E. 4. 28 & 29. 13 E. 3. Avow. 103. 21 E. 3. Avoury 115. 27 H. 8. 21. a. Pasch. 1 & 2 Ph. Mar. in Communi Banco, Rot. 329. It was adjudg'd, That where the Seignory is by Fealty and Rent, that Seifin of the Rent is Seifin of the Featry, and so is the Book adjudg'd in 29 E. 3. 31. s. and with that agrees 3 E. 2. Avoury 188. 2. It was (c) Co. Lir. 68.2. refolv d, that the doing of Homage is (g) Seifin for all Services, as well inferior as superior, because in doing of Ho-mage, he takes upon him to do all Services, and therefore his Service is fufficient Seifin of all the Services. And therewith agrees 13 H. 4 5. b. Seilin of Homage is Seifin of Escuage, which is superior, and of Relief, which is inferior, 22 Af. 66. Payment of 1 d. in the Name of Attornment of the whole, may be sufficient Seisin of (b) 4 Rents. 3. That Seisin of Rent, or (i) Suit, or other Service which is Annual is sufficient Seisin of Escuage, Homage, Fealty, Ward, Relief, Heriot-Service, Service to cover the Hall

2 Roll. 463.

Bevill's Cafe.

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ord's Park, or fuch casual Services, which perhaps will not happen in 40, 60, or 70 Years; and therefore there is est Reason that Seisin of annual Services shou'd he Seisin of all fuch calual Services, and therewith agrees, 20 E. 3. Avery 131. that Seisin of Rent, and other annual Services, is Seisin of Relief, and other Services casual or accidental, and 7 E. 6. Br. Gard 69. O Avowry 69. that it was agreed by the Justices of both Benches, that where the Seigmory is by Knights-service and Rent, that Seisin of the Rent which is annual and inferior to all the other, is a good Seifin, to have the Wardthip of the Heir of the Tenant; and therefore the Opinion of Brook there, that it shall not be a Seisin to make an Avowry is not Law: for the Case of the Ward is the stronger Case. But it was frid, That Seifin of one annual Service is not Seifin of another annual Service; As if there be Lord and Tenant by Fealty, 10 s. Rent, and three Work Days by the Year, Seifin of the Rent is not Seisin of the Work Days; nor Seisin of Rent is not Seisin of Suit of Court which is annual, vide 16 Eliz, Dyer 330. and the Reason is, because it shall be Dyer 330. pl. 19. for of that which is due yearly, and it would be mischiewous to the Tenant, for perhaps the Work Days were difcharged in ancient Times, which now can't be shewed; upon which Suits and Troubles wou'd enfue. But nota Reader, that all this which has been faid, is to be intended of sealin in Law, and not of actual Seisin; For Seisin of Fealty in the Case at Bar is no actual Seisin of Homage, nor of wit of Court, nor Seifin of Fealty is no actual Seifin of Rent. Vide 8 H. 7. 17. 20 H. 3. Assis 433. 40 E. 3. 22.49 E. 3. 15. b. 40 Ass. 6. 44 E. 3. 11. Br. Seisin 40. But Seisin of any Part 315. a. 2 Rol. fany Service, is actual Seisin of the whole to have Affi'e. 463. 6 Co. 57.20 Vide 5 E. 4. 2. b. 12 E. 4. 7. 8 E. 3. 13. a. 8 Ass. 4. 4. 4. 4. 3. 32. 3 E. 3. Assis 175. and as to avow, Seisin in Law is fufficient, but as to have Affife, actual Seifin is rewhite; so the Seisin which is requisite in a Writ of Right Land, ought to be actual and not Seisin in Law, as apurs 35 E. 3. Droit 30. & Litt. lib. 3. cap. Releases 112. ates thereto. If a Man makes a Lease for Life, or a Gift Kelw. 164. 2. Tail, yielding the first Year a Quarter of Wheat, and. nerwards the yearly Rent of C. Seisin of the Wheat is tilin of the Rent whereof he may have Ashse, for all is ut one Reservation. Vide 5 E. 4. 2. 44 E. 3. 11. b. 15 E. 3. are, 63. it is faid, that in the same Case all is one Freeold, and Seisin of the one is the Seisin of the other to we Affife, which was affirmed to be good Law. It was Cr. Car. 52. ofaid, if a Mesnalty becomes Rent-seck by Surplusage, 1 lones 2,4. eancient Seisin is sufficient; For the Mesnalty is extinct by Act of the Lord and of the Tenant paravail, and the Nature

PART IV.

of the Rent of the Meine is not altered by his own Act, but by the Act of others. And therefore altho' the Rent (a) Co.Lit. 153.2 is become seek, , yet he shall (a) distrein for it, as is said kelw. 104. 2. in 2 E. 2. Extinguishment 6. vide 31 Ass. 23. 26 H. 6. Ex. Car. 82. Perk. tinguishment 7. 7 Ass. 2 E. 3. 42. 20 E. 3. Avowry 126. Sect. 323. Lit. vide 50 E. 3. 26. 2 Presentation to a Prebend which is after changed into a Treasury, shall serve to maintain a Quare impedit upon Diffurbance to the Treasury. But if there be Lord and Tenant by Fealty and Rent, and the Lord grants over the Fealty faving the Rent; Or if a Man makes a Gift in Tail, or a Lease for Life, rendring Rent, and grants o. ver the Reversion, excepting the Rent, in these Cases the Nature of the Rent is altered by his own Act; and therefore the ancient Seisin when it was a Rent-service will not (b) 1 Leon 266. ferve, when by his own Act the (b) Nature of the Rent is altered; and Affise of any Rent-seck he can't have, for he was never seised of any such Rent; yet such Rent-seck which was once Rent-fervice feems to be apportionable by the Book in 32 Aff. 10. Return irreplevisable is a good Sei. fin of Rent, as it is held 2 H. 4. 23. for otherwise the Tenant might defeat the Lord of his Seigniory, and the Lord would never attain to his Services. So in Avowry for Suit. (c) 1 Rolls 314 if the Lord recovers (c) Damages for the Suit, it is a sufficient Seisin, causa qua supra. If the Lord grants his Seigniory upon (d) Condition, and the Tenant pays the Rent to the Grantee, afterwards the Condition is broke, and the Lord distrains for his Services, upon Rescous made he shall have Assise, for the Seisin before is sufficient. Otherwise if a Man gives Land upon Condition, the Condition is broke, the ancient Seisin is not sufficient, but he ought to enter and gain a new Seisin: But note in the Case of Rent (e) 2 Rolls 465. the Distress is in lieu of an Entry. Vide (e) 15 E. 3. Assistance 95. & 15 Ass. 12. quod vide Brook Seifin 38. If the Disseise releases to the Disseisor upon Condition, and afterwards the Condition is broke, the Disseise shall have Assise for the first Disseisin, as appears by 17 Ass. 2. & 17 E. 3. 2. where

> in Affise of Land the Tenant pleaded the Release of the Pl: the Pl. pleaded a Defeasance of the Release upon a certain Condition, and pleaded Performance of the Condition, and fo maintained the Affise, which proves that by the Performance of the Condition, and the bringing of the Affife, the Right which was released upon Condition was revested in the Pl. for without a Right he could not have Affife, and fo the ancient Seisin sufficient. If a Man grants over divers

> several Rents, and the Tenant attorns, and gives 1 d. in the Name of Seisin of all the Rents, it is a good Seisin for

all to have (f) Affise, and yet no Rent was due or payable

at that Time, and therewith agrees 22 Aff. 66. And yet if there be L. and Tenant by Fealty, and 20 d. Rent, and the Ld.

(d) Cr. Lit. 202. b. 2 Rolls 465.

(f) Co. Lit. 315. 2. 10 Co. is

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grants over his Seigniory, and the Tenant pays 2 d. to the Grantee in Name of Seisin of his Rent, yet at the Rent Day the Lord shall have his whole Rent of 20 d. for the 2 d. can't be (a) Parcel of the Rent, for no Rent is due or (a) 10 Co. 127.b. payable till the Day, and yet it shall enure to this Pur- 1 Inft. 95. 96. pose, f. to give Seisin of the Rent. Vide 34 H. 6. 42. a. 37 H. 6. 38. b. Br. Seifin 15. 5 E. 4. 2. a. 25 E. 3. 44. b. by Hill. 29 E. 3. 31. 22 Aff. 66. Lit. lib. 3. cap. Attorn. 127. a.b. Then it was moved, if Seisin of Fealty in the Case at Bar is Seisin of all the other Services within the Statute of \* 32 H. 8. Lir. Rep. 342.

cap. 2. by which Statute it is provided, That none shall moor 31. Co.Lir. have a Writ of Right of the Seisin of his Ancestor or Pre-115.2. decessor, unless the Seisin was within (b) 60 Years before (b) 6 Co. 59. 2 the Tefte; nor any Writ of Mortdanteftor, Aiel, Cofinage, or 1 Bulftr. 163. Writ of Entry sur diffeifin, unless the Seifin was within 50 Years before the Teste; nor any Action of his own Seisin or Possession, unless within (c) 30 Years; nor any Avowry, or (c) 1 Bulftr. 162; Conusans for any Rent, Suit, or Service, unless Seisin was had within 50 Years before the Avowry made: In all which tour Branches this Word (Seifin) is spoken indefinitely, and therefore if the Act had not gone further, this Word (Seifin) shou'd be construed according to the Subject Matter, sometimes for actual Seisin, and sometimes for Seisin in Law; and therefore as to the Writ of Right, Writ of Mortdancestor, Aiel, Oc. Assis, Oc. it shou'd be intended of an actual Seisin, and not of a Seisin in Law; so that the three first Branches are to be intended only of an actual Seisin, and the fourth Branch concerning Avowries extends to Seisins ... Law, as well as to Seisins in Fact, or actual Seisins: But the Words of the Act (upon which the Doubt arises) go farther, s. And be it farther Enacted, That if any Person or Persons shall sue any of the said Actions, Writs, Oc. or make any Avowry, Conusans, Prescription, or Claim for any Rent, Suit, Service, or other Hereditament, and cannot prove that any of his Ancestors or Predecessors were in actual Possession, or Seisin of or in the same Lands, Tenements, Rents, Services, &c. within the Years before limited by this Act and in Manner and Form aforesaid, if it be traversed or denied by the Plaintiff, Demandant, Avowant, or by the Party Tenant, or Defendant, that after such Trial had, the Party and his Heirs shall be barred of all such Writs, Actions, Avowries, Conusans, Prescription, Title and Claim for the same Lands, Tenements, and Hereditaments, orc. And it was objected, that these Words (actual Possession or Seisin) exclude Seisin in Law, and therefore this Act has altered the Common Law: For altho at the Common Law, Seisin in Law was sufficient to make Avowry, yet this Act allows only of actual Possession

or Seisin: and the Reason of it, as was said, was because actual Seisin is the fure Cognisance and Ensign of Right: But if the Seisin of the Fealty shou'd be Seisin for all the other Services, then wou'd Contention arise what were the other Services (which peradventure were never done) and which can't be known by any Seisin had of them. And therefore it was faid, that this Act by express Words extends only to actual Possession and Seisin, and not to relieve those who for so long Time have neglected to have actual Seisin of their Services, and especially of Suit, which ought to be done twice every Year: And it was faid, that it was Crassa & Supina negligentia, which this Law did never intend to relieve; For as it is commonly said, Vigilantibus (a) 1 Sid. 55. (a) & non dormientib' jura subveniunt. To which it was 2 Inft. 690. 2 Co. answer'd and resolv'd per totam Curiam, that Seisin in Law 26. b. Palm. 157. was sufficient to make Avowry within the Intention and the Letter also of the Act; For the Intention of the Act was to limit the Time within which Seisin ought to be had. and not to exclude any Seifin which was lawful Seifin by the Common Law, and that appears by the Preamble, for there it is faid, For as much as the Time of Limitation, Oc. extend, and be so far, and so long Time past, that it is above the Remembrance of any living Man, &c. Also the former Acts of Limitation, Scil. W. 1. cap. 38. W. 2. cap. 2. 6 46. do not exclude any Manner of Seisin which was sufficient at the Common Law. Also it is not against the Letter of the Act, for the three first Branches extend to actual Seisin, and the fourth extends as well to Seisin in Law as to actual Seifin: Then the faid Words of the Act, f. actual Possession, or Seifin in the disjunctive, makes a Distinction between actual Possession which refers to the three first Branches, and a Seifin, be it actual or in Law, which refers to the fourth, so that actual is coupled with Possession, and Seisin is disjoyned by this Word (or) and stands of itself indefinitely, & eo potius, because the Words subsequent are, and in Manner and Form as is aforesaid, which Words refer actual Possession or Seisin to the said four Branches precedent, so that reddendo fingula fingulis, all stands well together. 2. It was resolved, That the said Act doth not extend to such Rent or Service which by com-

mon Possibility may not happen or become due within 60

Years: As if a Seign. confifts of Homage (b) and Fealty only, for the Tenant may live above 60 Years after they are

done; fo if the Service be to cover the Lord's Hall, (c) or

to go with him when there shall be War between the King and any of his Enemies, such casual Services

which by common Possibility may not happen within 60 Years are not within this Act. The same Law of (d) Formedon in Discender, for the Tenant in Tail may

live

(b) 2 Inft. 95, 96. Co. Lit. 115. 2.

(c) Co. Lit.

(d) Lit. Rep. 342. Co. Lit. 315. 2. 1 And. 26. N. Bendl.

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live 60 Years after Discontinuance, and altho' in futto he dies within the Time, fo that the Issue may bring his Formedon, and altho' the lifue does not profecure any Writ within the Time, yet the Issue may bring it at any Time, for by common Possibility the Writ of (a) Formedon in Discen-(a) Kelw. 212.6. der was not within the Statute, as it is adjudged in \* Fitz-213.2. Bendl. William's Case, M. 10 & 11 Fliz. which is now reported 1 And. 16. N. by the Lord Dyer fol. 278. Also there it is said, That the Dyer 278. pl. 2. Seisin of the Donee was never traversable: The same Law Co. Lit. 115: 2. of Homage and Fealty, and other such accidental Servi- 21 Jac. cap. 16. ces, altho they become due within the Time limited by this Act, and by lachefs of the Lord no Seisin is had of them, yet he may distrain for them when he will, for they are not within the Purview of the Act: The same Law, if the Lord releases to the Tenant, as long as J. S. has Heir of his Body, and 60 Years pass, and afterwards J. S. dies without Heir of his Body; in this Case altho' the 60 Years are past, yet he may distrain, for it was impossible that he should attain to any Seisin within that Time, & (b) impo-(b) 1 Co. 98. 2. tentia excusat legem. And a Man may hold by Homage and 6 Co. 21. b. 68.2 Fealty, and they shall never be done by him. As if Land 8 Co. 172. b. held by Homage and Fealty is conveyed to Mayor and 10 Co. 139. b. Commonalty, or other (c) Corporation aggregate of many Co. Lit. 29. 2. in this Case they hold by Homage and Fealty, but they (c) Co. Lit. 66.b. can't do them. And therefore altho' they have enjoyed 7 Co. 10x b. Calthe Land above 60 Years wet if they alien the Land the refere be common to the land the refere be done by firm. As it Land to the land the land the refere be common to the land the land the refere be done by firm the land the refere by firm the land the refere be done by firm the land the refere by firm the land t the Land above 60 Years, yet if they alien the Land, the 10 Co. 32. b. Lord may diffrain for the Homage and Fealty, vide 33 H.8. Br. Fealty 15. And it was agreed, that the Writ of Efcheat, (d) Ceffevit, or Writ of (e) Rescous are not within this (d) Lit. Rep. Act, for in these Writs the Seisin is not traversable, but (2) 6 E. 4.11.b. the Tenure. Also in Writs of Escheat and Cessavit they demand the Land, and cannot alledge any Seisin in the same Land, Oc. as the Statute speaks, and therefore these Writs are not within the Statute, for the Act extends only to fuch Writ where the Demandant or his Ancestors may have Seisin of the Land in Demand within the Time of the Limitation prescribed by the Act, and the Statute doth not compel them to any Impossibility. And it is agreed in 21 H. 6. 22. a. that in a Writ of Escheat (f) or Cessa-(1) Fitz. Cessavit, the Demandant thall not alledge Esplees, and the Rea-vit 31. Br Efson is because he claims the Land by Reason of his Seig-plees 5. niory, and not by any Seisin of the Land in him, or any of his Ancestors. So neta, altho' the Lord was not seised of his Services within the Time of the Limitation, yet if the Tenant dies without Heir, the Land shall Escheat, for at the Time of the Escheat the Seigniory remains, altho' there wanted Seisin; and in the same Case, if the Tenant ceases for two Years, and the Land is not open and fufficient to his Diffres, the Lord shall have Cessavit albough he wants Seisin of his Services, for

6 Co. 23.2. Lit. 160. b.

(6) 27 Aff. 71. Br. Affife 273. 28 Aff. 50. Br. Affile 290. Br. Diftres 34. 8 Co. 50. 2. b. 11 Co. 44. a. F. N. B.

(c) 2 Inft. 105. 44 E 3. 20. 2. 9 Co. 76. 2 10 E 4. 7. 2. 85. 2. (d) 9 Co. 34. 2. Doct. pla. 318. 5 Co. 100. b. 2 Inft. 21. (c) Nnft. 21. 9 Co. 34 2. Doc. pla. 318. (1) 2 Inft. 21. 9 Co. 34 2. pla. 318.

(6) 2 Inft. 21.

in Ceffavit Seifin is not traverfable, 8 E. 3. 46. F. N. B. 209. E. vide in 10 @ 11 El. Dyer 278. And altho the L was never feised, yet because the Seign. remains, if he distrains, the Tenant ought not to make Rescous, as some Opinions are in 40 E. 3. 33. 4. 6 R. 2, Rescous 10. 22 H. 6. 2. b. 6 E. 4. 11. b. 7 E. 4. 20. a. But it was refolved, That if nothing is behind, and the Lord distrains, the Tenant may make (a) Rescous; or if he often distrains so that he can't manure his Land, he may have his Assis de (b) multiplici districtione and that in fuch Case the Tenant may make Rescous as divers Judgments have been given. Vide 2 H. 4. 21. b, 8 H. 4. 1. 4 E. 6. Diffress 75. Br. by the Justices. Vide 31 E. 3. Rescons 17. 39 E. 3. 45. 39 H. 6. 7. F. N. B. 102. E. 27 Ass. 51. 28 Ass. 50. Note Reader, a great Doubt in our Books well resolved; But for wrongful Distress where nothing is arrere, the Tenant shall not have an Action of (c) Trespass vi & armis against the Lord, for that is prohibited by the Statute of Marlebr. cap. 3. non ideo puniatur Dominus per redemptionem. And if Lord and Tenant are by 9H. 7. 4.2.14.2. Fealty and 2 s. Rent, and the Lord by Encroachment, s. Co. Lit. 137. 2. by voluntary Payment of the Tenant gets Seisin of more Fitz. Office del Court 7. Br. of than he ought to have, the Law so greatly favours Seisins See del Court 29. and Possessins, that he shall not avoid this Seisin had by Plow. 66. b. 84, Encroachment in (d) Avowry, unless it is in the Case of St. 2. the (e) Successor, as 4 E. 2. Avowry 204. is agreed; and in Case of the Issue (f) in Tail, as is held in 20 E. 3. A. vowry 131. But Seifin by Encroachment shall be avoided in Affife, (g) and Ceffavit. Vide 22 Aff. 68. 22 E. 3. 18. 28 Aff. 33. 12 E. 4.7. 10 H. 7. 11. 10 H. 6. 3. b. the fame Law in Trefpass. Also if he distrauns, f. for the due Rent and the Encroachment also, for the whole Rent Ar-Doct. pla. 318. Rent and the Encroachment allo, for the whole Rent Ar-(s) 5 Co. 100.b. rear the Tenant may tender that which is due of Right, 2 Co. 34-2. and may make Rescous if the Lord will not accept it, vide 12 E. 4. 7. 5 E. 4. 62. 87. and shall not be driven to Ne injuste vexes, or Contra formam feoffaments, as his Case is, but it shall be avoided in an Action brought by the Lord for the Rescous, or in Trespass brought by himself for the Diffress for the Sum which was encroached, and which of Right was not due. But if the Lord encroaches more by (b) Coercion of Diffress than he ought to have (altho' the Coercion be to his Goods) yet he shall avoid such Seisin in Avowry, vide 10 E. 3. 26. 22 E. 4. 7. Long 5 E. 4. 87. 20 E. 4. 17. 8 H. 6. 18. 30 H. 6. 5. 10 H. 7. 11. Plow. Com. 94. b. in Woodland's Case. 3. It was resolved, That altho'a Man has been out of Posses. of Land for 60 Years yet if his Entry is not toll'd he may well enter, and bring any Action of his own Possession, for the first Clause doth not bar any Right, but prohib. that no Perf. shall sue, have, or maintain any Writ of Right, or make any Prescription, Tit or Claim, for

for any Lands, Teneme nts, Rents, Commons, Oc. of the Possession of his Ancestor or Predecessor, but only of the Seisin of some of his Ancestors within 60 Years: But if his Entry is congeable, and he enters, he may have an Action of his own Possession; and the first and second Clauses extend only to Seisin ancestrel, and not to a Writ of Right brought of his own Seifin. And the third Branch extends only to Actions of his own Possession, and not to Entries: the fourth to Avowries, and the fifth to Formedon and certain Actions there mentioned. Nota Reader, forasmuch as by these Resolutions it appears, that the Services of Homage and Fealty are not within the Act of 32 H. 8. and that Seisin of Rent, or other annual Service is Seisin of Homage and Fealty, and that Seifin of Homage or Fealty is Seilin of all Services annual, or not annual; thence it follows, that when the Tenant has done Homage or Fealty. (which the Lord may compell him to do) it shall be Seisin of all other Services as to make Avowry, which of Right Co. Lit. 68.2. ought to be done, altho' the Lord nor any by whom he claims have had Seisin within 60 Years.

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### Trin. 20 ELIZABETHE Regina Rot. 28. In the King's Bench.

#### Actiones de Scandalis, or Actions for Slander.

Enry Lord Cromwell brought an Action de Scandalis Magnatum against Ed. Denny Vicar of Northlinham in the County of Norfolk, tam pro Dom' Regina, quam pro seipso; and declared upon the Statute of 2 R. 2. cap. 5. That if any contrive aliqua falsa nova, horribilia O salsa nuncia de Pralatis, Ducibus, Comitibus, & aliis Proceribus & Magnatibus Regni, Oc. by which Debate may arise betwirt the Lords and Commons (which God forbid) by which Danger, Mischief, and Destruction may happen to the whole Realm, Oc. and quicunque contra fecerit shall incur the Penalty of the Statute of W. 1. c. 33. And the Defendant was charged that he faid to the Plaintiff, (a) then a Baron of the Realm, It is no Marvel that you like not of me, for you like of those that maintain (b) Sedition against the Queen's Proceedings. The Defendant justified the Words, upon which the Plaintiff demurr'd, and the Bar was held insufficient. And Term' Trin' anno 23 Eliz. in Arrest of Judgment it was moved by the Defendant's Council, that the Declaration was insufficient, because the said A& of 2 R. 2. was (c) Dos. pla 93. (c) mifrecited; for the Words of the Act are, Si a scun controver afoun faux nouvelles & horribles & faux messoinges, which Word (d) (Meffoinges) he who translated the Statutes at large into English, has translated (Messages) which was the Reason that he who drew the Declaration in the Case (6) Cr. Car. 135, at Bar inserted the said Word (e) (nunein) where it should 136. 2 Bulftr. 91. be mendacia. 2. The said Act saith, and who soever shall do it shall incur, Oc. And the Plaintiff in his Declaration saith,

Ouicung; contra fecerit, which is as much as to fay, who shall

not do it; But against that it was objected. That the said

Act was a private Act concerning only the Prelates, Nobles,

(a) Cro. Car.

(6) Doct, pla. 6. 1 Rol. Rep.

and certain great Officers, whereof the Court won'd not take Notice ex officio; and therefore the Court ought to take the Act, as the Party has alledged it: But it was refolved by Wray Chief Justice, Sir Thomas Gawdy & totam Curiam, that it was such an Act, whereof the (a) Court (a) Hob. 228, concerns the King himself. I. Forasmuch as it touches the 336, 327, 338, concerns, Nobles, and great Officers, which are of the King's 28. 2. b. Poster Council, and of emineur Qualities, and serve him in Consent of the King's 28. 2. b. 77. 2. Council, and of eminent Qualities, and ferve him in fo Plowd 231.4 high and honourable Offices which they have under the K. and by his Royal Authority have the Administration of Juffice to his Subjects, by which it appears that the flandring of them principally concerns the King himself in his Royal Government. 2. Forasmuch as the Statute saith, That Danger, Mischief, and Destruction may happen to the whole Realm, &c. that also concerns the King for he is the Head of the Realm; and these are the Reasons that always such Actions de Scandalis magnatum have been brought upon the faid Stat. tam (b) pro Domino Rege quam pro seipso, and of all (b) Dod. pla. Statutes which concern the (c) King, the Judges ought to (c) Poster 77.2 take Notice. It was likewise resolv'd that if the Act was 8 Co. 28.2. private, and that the Court ought to take it to be fuch as is alledged; Then the faid Act was against Law. and Reason, and therefore void: For as it is alledged, those who don't offend shall be punished, and that was condemi nare in sontem & dimittere reum; wherefore Judgment was given against the Pl. quod nibil capiat per billam. And afterwards the Pl. brought a new Action, and amended the Faults of the Declaration: And then the Court was moved that the faid Words were not Actionable, because it might well be that the Pl. meant liking of some Persons which maintain Sedition against the Queen's Proceedings, and yet he did not (d) know that they maintain Sedition, nor do the (d) Palm, 278. Words import that the Pl. knew that they maintain'd Sedition, 487, 746. Cro. And it was faid, quod sensus verborum est duplex, scil. mitis 6 12c. 59, 268, asper; & verba semper accipienda sunt in (e) mitisre sensus. To (e) 4 Eo. 20. 2. which it was said, that Sedition is a publick Thing. Et Godb. 278. which it was said, that Sedition is a publick Thing. Et Godb. 278. dicitur Seditio (f) quasi seorsum itio magni populi, quando 17. b. Hutt. 38, it ad manus, which is notably described by the Poet:

Ac veluti magno in populo cum sape coorta est

i Roll. 71, 72,

Seditio, savitque animis ignobile vulgus,

jamq; faces of saxa volant, sur arma ministrat. Virg. Append.

which Sedition (being so publish and violant)

Collect. Append.

By which Sedition (being so publick and violent) it was 19, 20, &c. said that by common Intendment the Plaintiff had Notice of it; and it is not like Felony or Murder which may be clandestine, and done in Secret. But as to that the Judges did not deliver any Opinion, for the said, that upon Argument and Consideration they might alter their Opinion

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which they now conceived, which wou'd be dangerous to the Party; and therefore they faid to the Defendant's Council, be well advised, and plead, or demur at your Peril, wherefore they pleaded a special Justification, (well knowing that the other Matter wou'd be faved to them) and the Effect of the Justification was, That the Defendant was Vicar of Northlinham, which was a Benefice with Cure, and that the Plaintiff procured J. T. and J. G. to preach feverally in the Church of Northlinham, who in their Sermons inveigh'd against the Book of Common Prayer, which was established by the Queen and the whole Parliament in the first Year of her Reign, and affirm'd it to be superstitious and impious, &c. upon which the Plaintiff and Defendant speaking in the faid Church of these Sermons, because the Vicar knew they had no Licence nor were authorised to preach; when they were ready to preach, before their Sermons forbad them, but they by the Encouragement of the Plaintiff proceeded: The Plaintiff said to the Defendant, Thou art a false Varlet, and I like not of thee; To which the Vicar said, It is (b) no Marvel though you like not of me, for you like of these innuendo prad J. T. and J. G. that maintain Sedition, (innuendo seditiosam illam doctrinam) against the Queen's Proceedings; and so justified: And it was moved by the Plaintiff's Council, that this Bar was infufficient for two Reasons. 1. That the Matter of Justification was insufficient, because (as has been said) Sedition can't be committed by Words, but by publick and violent Action. 2. If the Matter of Juftification was sufficient, then upon the said Dialogue between the Pl. and Def. the Def. is not guilty: But it was faid, that fuch Justification Dialogue-wise had not been seen before; but if the Truth of the Cause is such, he ought to plead Not Guilty, and give the special Matter in Evidence. But if he will justify, he ought to justify the Words in the same Sense they import upon the Matter alledged in the Declaration. As if a Man (c) Doct. pla. 31. brings an Action on the Case for calling the Pl. (c) Murderer; The Def. will fay, that he was talking with the Pl. concerning unlawful Hunting, and the Pl. confessed that he killed feveral Hares with certain Engines; to which the Def. answered and said, Thou art a Murtherer (innuendo the killing of the faid Hares) this is no (d) Justification, for he does not justify the Sense of the Words which the Declaration imports, and theref. he ought to plead not guilty: But as to that it was answered by the Deft's Council, and (a) Dock pla 20, refolved by the whole Court, That the (e) Justification was good. For in Case of Slander by Words, the Sense of the Words ought to be taken, and the Sense of them appears by

the Cause and Occasion of speaking of them: For Jensus verbor' ex causa dicendi accipiend' ef, & sermones semper acci-

(a) Doct. pla. 20, 21.

(b) Dod. pla. 20, 21.

(d) Ded. pla. 21. Poftca 14-2.

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biendi funt Jecundum Subjectam materiam. Then in this Case the Defendant's Council have well done to thew the special Matter by which the Sense of this Word. (Sedition) appears upon the Coherence of all the Words, that it was in the Defendant's Meaning, the faid fedinous Doetrine against the Queen's Proceedings, scil, the faid Act of Parliament de anno primo, by which the Book of Common Prayer was established, and that he did not mean any fuch publick or violent Sedition as has been described, and as ex vi termini per se the Word it felf imports; And it was faid, God forbid that a Man's Words shou'd be by such strict and grammatical Construdion taken by Parcels against the manifest Intent of the Party upon Confideration of all the Words, which import the true Cause and Occasion which manifest the true Sense of them; Quis que ad unum finem loquuta funt, non Arbent ad alium detorqueri : And therefore in the faid Cafe of Murder, the Court held the (a) Justification good; (a) Doc pla. and that the Defendant shou'd never be put to the general 21. Antes 13. b. ffne, when he confesses the Words and justifies them, or confesses the Words, and by special Matter thews hat they are not actionable. And altho' he varies from the Plaintiff in the Sense and Quality of the Words, et it is no Cause to drive him to the general Issue: As in Maintenance the Plaintiff charges the Desendant with unawful Maintenance, the Defendant may justify by Reason falawful Maintenance, and may not plead the general Issue: wherefore the Plaintiff replied and faid, Quod prad' Edordus Denny dixit & propalavit pradicta verba, &c. de invia sua propria absque tali causa, and thereupon Issue was oyned; & postea partes concordaverunt; And this was the of Cause that the Author of this Book (who was of Counwith the Defendant) moved in the King's Bench. In his Case, Reader, you may observe an excellent Point of aming in Actions for Slander, to observe the Occcasion nd Cause of speaking of them, and how it may be pleaded the Defendant's Excuse. 2. When the Matter in Fact ill clearly ferve for your Client, altho' your Opinion is at the Plaintiff has no Cause of Action, yet take Heed on do not hazard the Matter upon a Demurrer; in which on the Pleading, and otherwise more perhaps will arise in you thought of; but first take Advantage of the Mats of Fact, and leave Matters in Law, which always arise on the Matters in Fact ad ultimum, and never at first mur in Law, when after Tryal of the Matters in Fact, Doct. pla. 116. Matters in Law (as in this Case it was) will be saved

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It was adjudg'd, that if one exhibits Articles to Justices M. 27 & 28 El. of Peace against a certain Person, containing divers great n B. R. Cutler Abuses and Misdemeanors, not only concerning the Periti-(a) 3 Leon. 123. oners themselves, but many others, and all this to the In-Leon. 35. Noy tent that he shou'd be bound to his good Behaviour: In this 151, 185. Cro. El. 230, 231, 248. Cro. Jac. Case the Party accused shall not have for any Matter contained in fuch Articles any Action upon the Case, for they 248. Cro, Jac. tallied In local 134, 191, 356, have pursued the (a) ordinary Course or Junice in local 432. Godb. 240, Case: And if Actions shou'd be permitted in such Cases, 269, 1 Rol. Rep. those who have just Cause of Complaint, wou'd not date 61, Palm. 145, 189, 1 Sand. to complain for Fear of infinite Vexation.

188, 189, 1 Sand. to complain for Fear of infinite Vexation.

188, 189, 1 Sand. to complain for Fear of infinite Vexation.

182, 2 Sid. 163, 1 Vent. 25. Mo.

143, 820, 821. The Case was, that Owen Wood exhibited a Bill in the 2 lnst. 228. Yelv. Star-Chamber against Sir R. (b) Buckley, and charged him 117. March. 76, 2 Sid. 163.

Lanc 50.

3. further, that he was a Maintainer of Pyrates and Murde.

M. 33 & 34 El.

Buckley & Wood.

in B. R.

(b) Cro. El. 230, Buckley brought an Action on the Case against Owen Wood.

28. Moor 705, and declared that the said Owen had exhibited the said.

Bill containing (inter alia) that the Sciences is and exhibited the said. bo. Hard. 223. Bill, containing (inter alia) that the faid Rich, was a Maintainer of Pirates and Murderers, and a Procurer of Murders and Piracies, and that the faid Owen at B. in the County of Salop, speaking of the Matters contained in the faid Bill, faid in auditu quamplurimor' That the faid Bill and Matters therein contained were true: The Defendant confessed the exhibiting of the Bill in the Star-Chamber, and that he in the faid Court at Westm' faid the said Words; absque hoc that he spoke the Words in the County of (c) Cr. El. 230. Salop, before or after the Day mentioned in the Declartion, by which he excluded the (c) Day it felf and anfwered not to it, for which Cause the Bar was held infulficient per totam Curiam. And it was refolved per total Curiam, That for any Matter contain'd in the Bill that was examinable in the faid Court, no Action lies, althou

(d) March 78, 77. Yelv. 117.
2 Inft. 228. Noy the Matter is meerly false, because it was in (d) Coursed 202. Cr. El. 230. Justice: And this agrees with the Opinion in 11 Eliz. Dyn 231, 248. Cr. 286. and with the Judgment in Cutler and Diren's Case. 134, 191, 285. and with the Judgment in Gutler and Dixon's Cale 356, 412. 3 Leon. before. 2. It was reloved and adjudged, an Action 123. 4 Leon. 35. Words not (f) examinable in the faid Court, an Action 123. 4 Leon. 35. Words not (f) examinable in the faid Court, an Action 123. 4 Leon. 35. 1 Bultr. 151, Words not (f) examinable in the said Court, an Action 185. 3 Bultr. on the Case lies, for that can't be in a Course of Godb. 240, Justice; for the Court has no Power or Jurisdiction 61. Palm 145, to do that which appertains to Justice, nor to punish the 188, 189. I Sand. faid Offences, and if such Matters may be inserted in Vent. 25. Moor Bills exhibited in so high and honourable a Court; 143, 820, 821. Breat Slander of the Parties, and they cannot answer

37. Kelw. 36, 37, 38. Cro. El. 248, 836. Cro. Jac. 134, 432. 2 And. 28, 29. 2 Brownl. 100. 1 Rol. 34. Hob. 206. 2 Inft. 228. Moor 143. 706. 1 Vent. 25.

PART IV. Actions for Slander.

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to clear thems, nor have their Action as well to clear thems. of the Crimes, as to recover Damages for the great' Injury and Wrong done them, great Inconvenience will enfue; but the faid Libel without any Remedy given the Party will ever remain always on Record, to his Shame and Infamy which will be full of great Inconvenience. Also by the Law no Murder, or Piracy can be tried on any Bill exhibited in English, but the Offender ought to be indicted for it, and thereupon to have his Tryal; and therefore he who preferr'd this Bill has not only mistaken the proper Court, but the Manner and Nature of exhibiting the faid Bill (as to the faid Clauses) has not any Appearance of an ordinary Suit in Course of Justice: But if a Man brings an Appeal of Murder, returnable in C.B. for that no Action lies; for altho' the Writ is not returnable before competent Judges who can do Justice, yet it is in the Nature of a lawful Suit; namely by Writ of Appeal. And afterwards Judgment was given for the Plaintiff. And so in the like Case, Tr' 21 Eliz. Rot. 561. inter Bowes (a) & Standen, (1) Cro. El it was resolv'd per totam Civiam in B. R. in the like Case 29. on a Bill preferr'd in the Star-Chamber; but the Parties agreed and no Judgment was entred. And upon the fame Judgment O. Wood brought a Writ of Error in the Exchequer-Chamber; and there it was refolv'd that upon the faid Matter Sir R. Buckley might have had a good Action: But in this Case, he has not alledged the Matter in a sufficient Manner, for the Action was not grounded upon the Bill exhibited at Westminster, but because he said in the County of Salop in auditu quamplurimorum, that his Bill was true without expressing the faid Matters in particular contain'd in the Bill on which the Action was intended to be grounded, so that they who heard only the said Words, That his Bill was true, cou'd not without faying more, know the faid Clauses that were flanderous to the Plaintiff; and for Co. Ent. 2; nu. this Cause the Judgment was revers d.

The Plaintiff reciting in his Declaration, that whereas he was a Justice of Peace, Surveyor of the Dutchy of Lan-P.27 El Stanhop caster, and had divers other Offices; The Desendant said of blath in B. K. Co. Ent. 21. 112. him, M. Stanhop hath but one Manor, and that he bath gotten 18. Cro. El. 1523, by swearing and for swearing: And it was adjudged that the Winch. 124. said Words were not actionable. I. Because they were too 3 Leon. 163. general; and Words which shall charge any one with an Action, in which Damages shall be recovered, ought to have convenient Certainty. 2. The Desendant doth not charge the Plaintiss with swearing or for swearing, for he

may

(a) 1 Rol. 39, 40, 41, 42. Godb. 340. Yelv. 27. Cro. El. 135, 293, 394, 492, 905. Poph. 211. Noy 34. 1 Bulft, 40. 3 Inft. 166. Hutt. 14, 44. Hob. 283. 1 Brownl, 283. 1 Brownl, 13. Moor 365, 404. Cro. Jac. 890, 204, 436. Cro. Car. 288, 337, 378. Winch. 2 & 3. 1 Leon. 127. 2 Jones 307. 30 H. 8. Br. Action fur le Cafe 104. (6) 5 Co. 31. 2. 73. a. (c) Hutton 34, 44. Cro. El. 135. Cro. Jac. 120. 238, 80, 436. Moor 365. Yelv. 27, 72. 3 Inft. 166. 1 Rol. 39, (a) Palm. 129.

may recover or get a Manor by fwearing and forfwearing and yet he was not procuring or assenting to it; and Words which maintain an Action ought to be directly applied to the Plaintiff, and not by Collection or Inference; for the Damages ought to be given to the Plaintiff, in Regard to the Damage which he has by the Scandal. 3. If one charges another that he has (a) forfworn himfelf, it is not actionable for two Reasons. 1. Because he may be forsworn in common Conversation, Quia benignior Sententia in verbis generalibus seu dubiis eft praferenda. 2. It is an usual Word of Passion and Anger for one to fay, that another has forfworn himself; As if one says of another, that he is a Villain, or a Rogue, or a Varlet, vel similia, these or such like will not maintain an Action, for (b) boni Judicis est lites dirimere: But if one says of another, that he is (c) perjur'd, or that he has forsworn himself in such a Court, for fuch Words an Action shall be maintained; for by these Words it appears that he has forfworn himself in a ludicial Proceeding; Sed hac ita in promptu sunt, ut res proba-tione non egeant. For all these Cases have been often adjudg'd. And Wray Chief Justice said, That altho' Slanders and false Imputations are to be suppressed, because many Times a (d) verbis ad verbera perventum est: yet he said, That the Judges had refolv'd, that Actions for Scandals shou'd not be maintain'd by any strained Construction or Argument, nor any Favour given to support them, for as much as in these Days they more abound than in Times past, and the Intemperance and Malice of Men increase; Et malitiis hominum est obviandum: And in our Books Actiones pro Scandalis funt rarissime; and such which are brought, are for Words of eminent Slanders, and of great Import.

Eodem Term' Hext v. Yeomans in B. R. Poph. 210. I atch. 176. Godb. 340.

Teomans charged Hext then being a J. of Peace; For my Ground in Allerton, Hext feeks my Life, and if I could find John Silver, I do not doubt but within two Days to arreft Hext for Suspicion of Felony: And it was adjudged, that for the first Part of the Words, That for my Ground in fons. 1. Because he may seek his Life lawfully upon just (a) 4 Co. 13. a. Cause, and his Land may be held of him, and so in (s) Poster 17. b. mitiore sensu. 2. Seeking of his Life is the second of the Poster 17. b. mitiore sensu. 2. Seeking of his Life is too general, and for seeking tantum no Punishment is inflicted by the Law: But for the (b) latter Words it was adjudged, that the 19, 23. Hutt. 38, Action lay, because for Suspicion of Felony he shall be imprisoned, and his Life drawn in Question.

Poph. 211. 1 Roll. 71, 72, 73. 1 Mod. Rep. 65, 113. (6) Poph. 210. Latch. 176. 3 Bulft. 262. Godb. 340.

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Byrchley being one of the Attorneys or Clerks of B. R. and fworn to deal duly without Corruption in his Office; M. 27 & 28. EL. the Defendant speaking of the Manner of Byrchley's dealing ley's Cafe. in his Profession, said to Byrchley, You are well known to bea corrupt Man, and to deal corruptly. 1. It was refolv'd that (a) 1 leon. the faid Words ex causa dicendi imply that Byrchley had 336. Hob. 9. dealt corruptly in his Profession: Also it was faid, Quod i Bulftr. 134 sermo relatus ad Personam, -intelligi debet de (b) conditione Poph. persona. And the Plaintiff had Judgment for two Reasons. Cr. Car. 1. Because the said Scandal touches the Plaintiff in his 490. 2 Rolls Rep. said Oath. 2. The said Words scandalize him in the Date of 149. Hetl. faid Oath. 2. The faid Words scandalize him in the Duty 123, 1 0, 161. of his Profession by which he gets his Living. Skinner a Hutt. 104 Merchant of London faid of Manwood Chief Baron, That he (6) Cr. El 192. was a (c) corrupt Judge; and it was adjudg'd that the Godb. 278. Hutt. Words were actionable, Vide 4. E. 6. Action sur le Case 112. 104. 1 Ventr. But it was resolv'd in the principal Case, That if the pre- (c) Poster 19. 2. cedent Speech had been, that Byrchley was an Usurer, or that I Ventr. 50. he was another's Executor, and would not perform the Rep. 23. Will, &c. and thereupon the Defendant had spoke the said Rep. 136. Words, then no Action would be maintainable for them, which agrees with the Resolution in the Lord Cromwel's Cafe.

Stuckley (d) Justice of Peace in the County of Devon, 7. brought an Action on the Case against Bulbead for these M. 44 & 45. El. Words; M. Stuckley covereth and hideth Felonies, and is not & Bulhead. worthy to be a Justice of Peace; And adjudg'd, that the (d) Cr. Car. 15. Action lies, for it is against his Oath and the Office of a 1 Ventr. 50. Justice of Peace, and a good Cause to put him out of the Cr. Jac. 56. Commission, and he may be indicted and fined for it.

The Defendant said, That the Plaintiff was (e) detected 8.

for Perjury in the Star-Chamber; and adjudged, that no H. 37. El. WezAction lay: For an honest Man may be detected, but not ver & Cariden.

convicted; and every one who has a Bill of Perjury exhi
Cr. Car. 268.

Hutt. 2. 2 Rol.

Rep. 142.

The Plaintiff shewed in his Declaration, That the Defendant had a Wife yet living, and that the Defendant H. 39 Fl. In C.B. said of the Plaintiff, Thou hast killed my (f) Wife, thou art Snag. v. Gec. a Traytor. And as to these Words, Thou hast killed my 489. Poph. 187. Wife, the Desendant demur'd in Law; and it was adjud- i Jones 141. ged, that no Action lay; and the Difference taken when Winch. 39, 40. the Wife was living (as in this Case it appeared she was) 3 Bulftr. 167. and when she was dead; For when she is alive no Action March. 109. lies, altho' the Desendant says, That the Plaintiff has murdered her; for then it appears that no Murder of her can be committed, nor the Desendant in any Jeopardy, and so the Words vain, and no Scandal or Damage to the Plaintiff.

Meming w Cower. 10 Mall. 564.

D. B. Eaton v. Cr. Eliz 6) Cr. EL 49. Moor 419. 2 Bultt. 206. 2 Bulttr. 167. ane 98. 91. 3, Bulft.

(a) Moor 142. Leon. 187. Siderf. 22, 31 Anderf. 121.

1 Jones 195. 2 Siderf. 231.

The Defendant faid of the Plaintiff, He is (a) a Brable and a Quarreller, for he gave his Champion Counsel to make a Deed of Gift of his Goods to kill me, and then to fly out of the Country, but God preserved me. And it was strongly urged that the Action thould be maintainable, and divers Cales cited; one of the Lady (b) Cockeys, M. 32 C 33 El. in R. R. for these Words, My Lady Cockeyn offered to give Poyfon to one to kill the Child in her Body. Another inter Tibots & Heyn in Gloucefter for thefe Words, (c) Tibots and another did agree to hire one to kill S.B. Alfo Cardinale Cafe for these Words, If I had consented to M. Cardinal, T. H. had not been alive : And the Lord Lumley's Cafe; My Lord Lumley (d) hath gone about to take away my Life against all Christian Dealing. But upon great Consideration and Advisement it was adjudg'd that in the principal Case the Cr. Car. 140. of a Man without At is not punishable by law Fr. of a Man without Act is not punishable by Law. Et ubi non eft Lex, ibi non eft transgreffio quoad mundum. And altho' for fuch Conspiracy he might be punished in the Stars Chamber, that is by the absolute Power of the Court, and not by the ordinary Course of the Law. Nota bene, this Case, and the Cause and Reason of this Judgment.

. Gardiner 307 1 Jones 14 2 Side ft. 172. Latch. 218. 2 Rolls Rep. 249. Poph. 140. Heth. 164.

The Plaintiff declared, That the was a Virgin of good Tr. 35 El. Davis Fame; &c. and free from all Suspition of Incontinency, Oc. And whereas Anthony Elcock Citizen and Mercer of London, Proph. 36. And whereas Anthony Elcock Citizen and Mercer of London, a Rolls Rep. 34, of the Substance and Value of 3000 l. desired her for his 36, 119 Moor Wife, and had thereupon conferr'd with John Davis her Father, and was ready to conclude it, the Defendant (pre-21. 175. Cr. ther, and was ready to conclude it, the Land, and to ob22. 323. 2 Bulft. miffarum non ignarus) to defame the faid Ann, and to ob23. 1 Jones 141. ftruct the faid Anthony's Proceeding, uttered and published Side 8. 172.

24. 175. Cr. ther, and was ready to conclude it, the confiderance of the faid Ann these Words; I know Davis's Daughter tach. 218.

25. 18. Of the faid Ann these Words; I know Davis's Daughter tach. 218. well (innuendo præd' Annam) she dwelt in Cheapside, and there was a Grocer that did get her with Child (and the De fendant being there then admonished that he should be advised quid dixerat de prafata Anna:) ulterius de cadem dixil: I know very well what I say, I know her Father, and Mother, and Sifter, and she is the youngest Sister, and had the Child by the Grocer: By Reason of which Words the Pl. was greatly defamed, & ratione inde diet Anthonius ipfom Cr. Jac. 323. Cr. Annam in unor ducere penitus recujabat; and the Defendant Fliz. 639.

Pleaded not guilty, and by Niss prius in the County of pleaded not guilty, and by Nisi prius in the County of Buck. the Jurors found for the Plaintiff, and assessed Damages to 200 Marks. And it was now moved in Arrell of Judgment by the Defendant's Council, that the faid Defamation of Incontinency concern'd the Spiritual, and not the Temporal Jurisdiction: And therefore as the Offence shou'd be punished in the Spiritual Court, so her Remedy for such Defamation shou'd be there also; for Cognitio causa non speciat ad Forum Regium: So if a

(for as much as these belong to the (a) Ecclesiafical (a) a Brown different, or Adultion) no Action lies at the Common Law; and in Cr. Eliz. 767, of thereof 12 H. 7. 22. a. b. 6 27 H. 8. 14 a. b. were cited. Godb. 327, 328, it was answered by the Plaintiff's Council, and resolved otom Carism, that the Action was (b) maintainable for (b) Cr. Eliz. easons. I. Because it the Woman had a Bastard, she 639, 787. \* punishable by the Statute of 18 Eliz. cap. 3. And al- cart. 55. Palm Fornication or Adultery is not examinable by our 198. because they are done in secret, and peradventure indecent to be openly examin'd, yet the having of a ard is a Thing apparent and punishable by the faid 2. It was resolv'd, if the Defendant had charged Plaintiff with bare Incontinency, yet the Action should maintainable: For in this Case the Ground of the Action ge, and that she was defeated of it, and the Means by 155. Cr. Jac. ich she was defeated was the said Slander, which Means 298. 1 Rolls 35. ding to fuch End shall be try'd by the Common Law. 3 Keb. 143. if a Divine is to be presented to a Benefice, and one to 5 Co. 58 a at him of it, says to the Patron, That he is an Hereor a Baftard, or that he is Excommunicated, by which Patron refuses to present him (as he well might if the outations were true) and he loses his Preferment, he have his Action on the Case for these Slanders tendto fuch End. And if a Woman is bound that the shall continent and chast; or if a Lease is made to her ndiu (d) cafta vixerit, in these Cases Incontinency shall (d) 1 siderfine tried by the Common Law. And Popham Chief Justice

That if one says of a Woman that keeps an (e) Inn, (e) 2 Rolls Rep. the has a great infectious Disease, by which she lo-136. Cr. E her Guests, she shall have an Action on the Case. Trin. 582, 583. Bliz. in B. R. inter Banister & Banister, it was resolved, t where the Defendant said of the Plaintiff (being Son Heir to his Father) that he was a (f) Bastard, that an (f) 2 Rolls Rep. ion on the Case lies; for it tends to his Disinherison 250. Cr. Jac. he Land which descends to him from his Father: But 422. Cr. Car. ere it was resolved, That if the Defendant pretends that \( \frac{469}{388} \). Hob. 1796

e Plaintiff was a Bastard, and that he (g) himself was Godb. 451.

e next Heir, there no Action lies, and that the Desen-63. 3 Bulst. 75.

In may shew by Way of Bar, if the Plaintiff omits it 1 Rolls 30. Cr.

his Declaration; which agrees with the Resolution in (g) Poster 18. a.

The Plaintiff declared, That the Desendant and one 183. Cr. El. 1976

In Bonner having Conference of the Plaintiff, the De
12.

Idant said of the Plaintiff to the said Table Barner that Mat 8 43. El. ords, Hang him (prædictum Johannem James innuendo) v. Rutkeh. Mo. is full of the Pox (innuendo) the French (a) Pox, 1573-1 Rolls 67. rvel that you (præd' Johannem Bonner innuendo) will eat (a) Ct. El. 289.

Actiones de Scandalis, or PARTIV.

or drink with bim, (predictum Johannem James innuendo) I will prove that he is full of the Pox (innuendo) the French Pox. The Defendant pleaded, nor guilty, and it was found for the Plaintiff, and Damages affelfed. And it was mov'd in Arrest of Judgment, that the Words were not actionable: And it was refolv'd, that in every Action on the Case for flanderous Words, two. Things are requisite, 1. That the Person who is scandalized, is (a) certain. 2. That the Scandal is apparent by the Words themselves and therefore if one fays without any precedent Communi-

cation, that one of the Servants of f. S. (he having many)

Thief. For the Office of an innuendo is to contain and

(a) Moor 63.

is a notorious Felon, or Traytor, &c. here for the Incer-(b) i Siderf. 52- tainty of the Person no Action lies; and an (b) innuendo March. 109, 110. tanty of the letter in Rolls Rep. 145. can't make it certain. So if one fays generally, I know Cr. Car. 2365, one near about J. S. that is a notorious Thief; or fuch like; 243; 443; But when the Person is once named in certain, as if two 3 Bult. 72, 83. 1 Rolls hen 227. speaking together of J. S. one says He is a notori-Jac. 241, 126, our Thief, there J. S. in his Declaration may shew that Jac. 241, 126, our Thief, there J. S. in his Declaration may linew that 207, 514 Cr. there was Speech of him between them two, and that 11 497. Hob. 2, there was Speech of him between them two, and that 12 497. Hob. 2, there was Speech of him, He (innuendo predict J. S.) is a notorious 3, 43, 268. Aleyn one faid of him, He (innuendo predict J. S.) is a notorious 22. Styles 46. Yelv. 21. Hutt. 65. 1 Rolls 82, 83, 84. Hetl.

defign the fame Person who was named in certain before, and in Effect stands in lieu of a pradict', but an innuendo can't make a Person certain who was incertain before. For it wou'd be inconvenient, that Actions shou'd be maintained by Imagination of an Intent which doth not appear by the Words upon which the Action is grounded, but is altogether incertain and subject to deceivable Conjecture: (e) to Carso.b. But if one fays to J. S. Thou art a (c) Traytor, &c. there constat de persona, and the Action lies: So here in the Cale at Bar, when the Defendant and Bonner had Speech of the Plaintiff, Then, when the Defendant said, Hang him, there innuendo will denote the same Person named before: But if the Defendant without any Discourse of the Plaintiff had said, Hang him, &c. there no innuendo wou'd have made the Person certain. As to 2. as an innaendo can't make the Person certain which was incertain before, so an innuendo can't alter the Matter or Sense of the Words themselves: And therefore when the Defendant in the Cale at Bar said of the Plaintiff, That he was full of the Pox, (innuendo) the French Pox, this innuendo doth not do its proper Office, for it endeavours to extend the general Words, the Pox, to the French Pox, by Imagination of an Intent which is not apparent by any precedent Words, to which the innuendo shou'd refer. And the Words them, felves shall be taken in (d) mitiori sensu.

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(a) Antes 13. 2 15, b. 4 Co.20.2. Godb.278.Poph. 211. Hutt. 38.65, 113. 1 Rolls 71, 72, 73. 1 Mod. Rep. 19, 23. Latch. 2 Palm. t

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The Plaintiffs brought an Action in London, because the 13.

Defendant called the Plaintiff's Wife (a) Whore; and the Tr. 41. El. Ox.

Ford. & Ux. v. The Plaintiffs brought an Action in London, because the Defendant removed it into B. R. by Habeas Corpus, and it Cross. was moved to have a Procedendo to remand it, because the (a) 1 Rolls 550 Action was maintainable in London for the said Words, March. 107. Ca but not at the Common Law. And the Procedendo was Car. 141, 350, denied per tot' Cur'. For such Custom to maintain Actions Cr. Eliz. for fuch brabling Words is against Law; Licet (b) consue-283. Liu. Rep. 30, tudo sit magna Authoritatis, nunquam tamen prajudicat mani-229, 245. 6 Co. fefte veritati.

The Plaintiff declared that he was seised of the Manor 14 and Castle of H. in the County of Strafford in Fee by Pur-M. 32 & 33 El. chase from George Lord Audley; and that he was in (4) Knt. Master Communication to demise the said Castle and Manor to of the Rolls v. Releb Exerton for 22 Years for 2001. Fine and 1001. Rent (1) Yelescon. Ralph Egerton for 22 Years for 200 l. Fine, and 100 l. Rent (a) Yelverton 84' per annum; and that the Defendant (premissorum non ig- Cr. Car. 140, nara) said, I have a Lease of the Manor and Cassle of H. 307, 398, 485.
for 90 Tears, and then and there shewed and published Rolls Rep. 244
a Demise supposed to be made by George Lord Audley, Palm. 529. Cr.
Grandsather to the said George Lord Audley, El. 196. Grandfather to the faid George Lord Audley, for ninety Years to Edward Dickenson her Husband, and published it, and offered to fell it; ubi revera the faid Lease was counterfeited by her Husband, and that the Defendant knew it to be counterfeited; by Reason of which Words and Publication, the faid Reason of which Words and Publication, the faid Ralph Egerton did not proceed to accept the said Lease, to Damage, Oc. The Defendant pleaded in Bar, quod (b) talis Indentura (qualis in the De- (b) Postea 18.6. daration is alledged) came to the Defendant's Hands by Cr. Eliz. 1965. Trover, and traverled that she knew of the Forgery, upon which the Plaintiff demurr'd in Law. And in this Cale three Points were resolved. 1. If the Defendant had affirmed and published, that the Plaintiff had no Right to the Castle and Manor of H. but that she her self had Right to them, in that Case, because the Desendant her self (c) 1 Rolls Rep.

pretends Right to them, altho' in Truth she had none, yet Cr. Jac. 184.

no Action lies. For if an Action should lie when the De-Moor 188. Cr.

sendant her self claims an Interest, how can any make Claim 17. 2. Hob. 205.

or Title to any Land, or begin any Suit, or seek Advice (d) Supra 17. 2.

and Counsel, but he should be subject to an Action, which (e) Fitz. Action

Would be inconvenient. Which Paschution agrees with sur le Case 16. wou'd be inconvenient. Which Resolution agrees with sir le Case 16. the Opinion in (d) Banister's Case before, (e) 2 E. 4. le Case 90. 5. a. b. 6 (f) 15 E. 4. 32. a. b. no Action on the Case sure Case 63. lies against one who publishes another to be his (g) Villain, Br. Villenage 75. without faying that he lies in wait to imprison him, Et tales 197. Kelw. 26.b. O tantas minas in ipsum fecit, quod circa negotia sua palam in- 40-2. tendere non audebat. Vide 22 E. 3. 1. in (h) Conspiracy, 38 E. 3.

33.

33. 43 E. 3. 20. F. N. B. 116. b. And therefore it was refolved, that for the faid Words, I have a Leafe of the Manor of H. for 90 Years, altho it is false, yet no Action lies for standering of his Title or Interest in the said Castle and Manor. And altho' it appears by the Defendant's Bar that she has no Title or Interest in the said Lease, but is a Stranger to it; yet for as much as the Matter alledged (a) Dock. pla.69 in the Declaration doth not maintain the Action, the (a) Bar will not make it good. 2. It was resolved, that there was other Matter in the Declaration sufficient to maintain the Action, and that was because it is alledged in the Declaration that the Defendant knew of the Communica. tion of the making of the faid Lease to Ralph Egerton, and also that the knew that the Lease was forged and counterfeited, and yet (against her own Knowledge) the has affirmed and published, that it was a good and true Lease, by which the Plaintiff was defeated of his Bargain. Vide 5 E. 4. 126. If a Man (b) forges a Bond in my Name, and puts it in Suit against me, by which I am vexed and dam-nified, I shall have an Action on the Case, 42 Ass. B.

(6) Hob. 267. Cr. Eliz. 197.

468, 469, 474-Cr. Eliz. 44-

(c) Cr. Jac. 197, offered 8 Oxen to fell to A. as his (c) proper Goods, 468, 469, 474 knowing them to be the proper Goods of P. A. trusting in the Fidelity of B. bought them for 81. and afterwards P. retook the Oxen; in that Case A. shall have an Action upon the Case against B. 3. It was resolved, that the Bar was insufficient, for the Defendant's knowing of the Forgery is not traversable. As in an Action upon the Case, because the Defendant's Dog has bit the Plaintiff's Cattel,

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(d) Cr. Jac. 398, ipfe sciens canem suum ad mordendas oves consuetum; the (d) (sciens) is not traversable, but ought to be proved in E-Cr. Car. 254, (Joiens) is not traverlable, but ought to be proved in E-487. 3 Bulft. 76. vidence upon the general Issue, for Joiens, &c. is no direct 28 H. 6. 7.2. Allegation, nor ever alledged in any Place, so that it is fans ceo 20. Doct. not traversable nor triable. Also the Manner of Pleading, pla. 189. Hard. 2. (e) talis Indentura qualis in the Declaration is alledged, is 2 Bulft. 291. no direct Answer to the Indenture alledged in the Declaration. Rolls Rep. 43, ration, for talis Indentura non est eadem Indentura; for (e) Cr. Eliz. (e) Cr. Eliz. Nullum simile est idem. Vide 30 Ass. 19. 2 E. 4. 5. 15 E. 4. 196, 197. Doct. 22. 32. 27 H. 8. 14. 22. 30 H. 8. Br. Action sur le Case 104. 4 E. 6. ibid. 112. 28 H. 8. Dyer 19. 6 E. 6. ibid. 72. & 75. 3 Mar. ibid. 118. 7 Eliz. ibid. 236. 11 Eliz. 285. 15 El.

M. 44 & 45 El. n B. R. Brites Cale. Yelverton 10, 343. Moor 666.

Brittridge brought an Action upon the Case for these Words, Mr. Brittridge is a perjured old Knave, and that is to be proved by a Stake parting the Land of H. Martin and Mr. Wright. The Def. pleaded not guilty, and was found guilty;

317. And these are in Effect all the Cases in our Books.

guilty: And now in Arrest of Judgment it was moved, that thefe Words are not (a) Actionable. 1. Because this Word; (a) Cr. Jac. 822 A perjured old Knave, the Noun is Knave, and perjured is spoke adjectively; As if a Man says, one is a seditious or thievish Knave, these Words are not actionable, because the Words do not import that he hath made Sedition or Felony, but are adjective, which imply an Inclination to it. 2. That the Court ought to judge upon all the Words together, and collect the Defendant's Intention upon all his Words, and not to take his Words by Parcels. And it was faid that (b) the last Words extenuate the genuine and proper Sense of the first Words, for Perjury thall be in- (6) stiles 379. tended in fome Court upon Judicial Proceeding; but when he adds, And that is to be proved by a Stake parting, Oc. that explains for any Thing that appears to the Court, that this Perjury was not in any Court, but an unadvised Oath extrajudicial about the placing of a Stake for a Partition. As to the first, it was resolved by Popham Chief Justice, Gawdy, Fenner, and Yelverton Justices, that for these Words, Thou art a perjured Knave, without any more, an Action upon the Case lies, for sometimes adjective Words will maintain an Action, and sometimes not. They are actionable, I. When the Adjective presumes an Act committed. 2. When they scandalize one in his Office, or Function, or Trade, by which he gets his Living; As it a Man says, That one is a perjured Knave, there must be an Act done, or otherwise he can't be perjured, as was resolved before: So if one says of an Officer, or a Judge, That he is a (c) corrupt Officer or Judge, an Action lies (c) Supra 16. 2 for both Causes; 1. Because it implies an Act done: 2. It 1 Ventr. 50 is slanderous to him in Respect of his Office. Pasch. 24 El. Rep. 126. Pasch. in B. R. Philips Batchelor of Divinity and Parson of D. Rep. 126. Pasch. brought an Action upon the Case against Robert Budby Esq; Philips & Badby because the same Defendant spoke these Words in London, in B. R. Thou hast made a seditious Sermon, and moved the People to Sedition this Day. The Defendant justified at St. Edmond's Bury in Suffolk, that he spake the said Words at Bury, upon which the Plaintiff demurred; and in that Cafe two Points were resolved. 1. Notwithstanding that the first Part of the Words were utter'd adjectively, and the latter Words were but moving to Sedition, and it did not appear that any follow'd, yet because they scandaliz'd the Pl. in his Function, it was resolv'd that the Words were Actionable. 2. That the Def. ought to have justified the (d) Cro. Jac. Words in London, and not at Bury, for the Words in the 345, 585. 2 Role Declaration were not answered; wherefore Judgm. was given 472. 1 Role Rep. for the Pl. So if one fays of a Merchant, That he is a Bankruptly 22. 2 Builtr. 210.

Knave, or Bankrupt Knave altho' there (d) Bankrupt be spoken Godb. 151.

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adjectively, Cr. El. 108, 911

Actiones de Scandalis, or PART IV.

(a) a Rolls Rep.

65, 66. Aniea 16. b Yelverton 90.

Godb. 241. Cr. Jac. 39. Hutt. 113. Cr. Jac.

adjectively, yet an Action lies, as it was adjudged in Mit. ton's Case in C. B. Mich. 43 & 44 Eliz. Or if one says of a Merchant, That he (a) will be Bankrupt in two Days, which implies but Inclination, yet an Action lies, 6 E. 6. Dyer 72. for that defames him in his Trade by which he gets his Living: But when the Words do not imply an Act done, but an Inclination to an Act which doth not scandalize the Party in the Duty of any Office, or Function nor in his Trade of living, there an Action upon the Cafe doth not lie; as to fay that he is a seditious or (b) thievill Knave, these do not import an Act to be done, but an (c) Intent or Inclination to ir, which is not punishable by the Common Law. As to the second it was resolved in the Case of Brittridge, That upon all the Words taken together no Action lay; for the latter Words extenuate the first, and explain his Intent, that he did not intend any ludicial Perjury. Also it's impossible that a Stake can prove him perjured: And therefore upon Confideration of all the Words for the Impossibility and Insensibility of them they are not actionable, as it has been adjudged, that where one fays to another, Thou art a Thief, for thou hast stallen my Apples out of my Orchard; or, For thou hast robbed my Hop-6743 Inft. 109 ground, which latter Words prove it no Felony, and fo qualify the proper Sense of this Word Thief, which of it

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felf, altho' it is generally spoken, will bear an Action. And so it was adjudged inter Dobbins & Franklin, Mich. 43 & 44 Eliz. in C. B. And it was agreed that it is all one to fay Thou art a Thief, for thou hast stollen my Apples out of my Orchard; and to say, Thou art a Thief, and that will be proved by flealing my Apples in my Orchard. So in the Case at Bar, Thou art a perjured old Knave, and that will be proved by a Stake parting, &c. For the Office of Judge is upon Consideration of all the Words to collect the true Scope and Intention of him who speaks them: And if in this Case the Plaintiff had declared only upon the first Words, S. Thou art a perjured Knave, the Defendant might have shewed all the Words, and the Coherence of them, as appears before in the Lord Cromwel's Cafe. But it was faid, that if the Plaintiff's Council had disclosed the Truth of the Case in the Declaration, the said Word would have well maintained the Action; for the Truthof the Case was, That in an Action between Martin & Wright, the State of the Controversy was, Whether the said Siah stood upon the Land of the one, or of the other, or indifferently, as a Boundary betwixt them. And in that Action the Plaintiff was fworn as a Witness, and by the Pretence of the Defendant had in his Deposition perjured himself But this special Matter was not shewed, and therefore # was adjudged, que Querens nihil capiat per Billam. Barhan

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Barham brought (a) an Action on the Cofe against Netherfal, and the Words were, Master Barham did burn my Barn (in- M. 44 & 45 Eliz. nueudo a Barn with Corn) with his own Hands and none but ham's Case. be; and after Verdict, it was mov'd in Arrest of Judgment, (a) Co. Entr. 24.

That the Words were not actionable, for it is not Felony Numb. 22.

(b) to burn a Barn if it is not Parcel of a Minston-House, 1 Rolls 73, 82.

nor full of Corn: And in such Case agitur civiliter and not Hutt. 65, criminaliter, & verba accipienda funt in (c) mitiore sensu: And Cr. lac. 438.

the (d) Innuendo will not serve when the Words themselves 3 Bulstr. 83.

are not flanderous; which well agrees with divers of the Re. (b) Stams. Cor. Solutions before.

folutions before.

Touching Defamations determinable in the Ecclefiastical Halespl. Cor. 85.

Court, it was resolved, That such Defamation ought to have 11 Co. 29.

three Incidents: I. That it concerns Matter meerly Spiritual 2 Inst. 188.

and determinable in the Ecclesiastical Court, as for calling him 1 Jones 351.

Heretick, Schismatick, Adulterer, Fornicator, Oc. 2. It ought 3 Inst. 66, 67.

to concern Matter meerly Spiritual only, for if such Defa- 10 E. 4, 14 b.

mation touches or concerns any thing determinable at the 49 H.6. 14. b. in

Common Law, the Ecclesiastical Judge shall not have Conu-(e) Antea 17. b.

fans of it. 3. Altho' such Defamation is meerly Spiritual 13. 2, 15. b. 3. Altho' fuch Defamation is meerly Spiritual Godb. 278. and only Spiritual; yet he who is defam'd can't fue there for Poph. 211 Amends or Damages, but the Suit ought to be only for the Hutt. 38,66,113. Punishment of the Sin, pro fulute anima. And as to the first 1 Mod. Rep. 19,23. and 2d, the Case in 22 E. 4. 20. a. b. was cited to this Effect: Latche. Palm. 29. The Abbot of St. Albans sent his Servant to a Feme Covert (d) Antea 17. b. to come to his Master and speak with him, the Servant per-March 109. 119. to come to his Master and speak with him, the Servant per-March 109, 110. to come to his Master and speak with him, the Servant per-March 109, 110. form'd his Command, and thereupon the Woman came with 2 Rol. Rep. 145. him to the Abbot; and when the Abbot and the Woman were 443.3Bulft.72,83 together, the Servant (who knew his Master's Will) withdrew 1 Rolls Rep. 227. from them, and left them two in the Chamber alone; and 167. Cr. Jac. then the Abbot said to the Woman, That her Apparel was Cr. El. 497. gross Apparel; to whom the Woman said, That her Apparel was Cr. El. 497. gross Apparel; to whom the Woman said, That her Apparel Allengs. Sciles 46. rel was according to her Ability, and according to the Ability Color 1 Rol. 82, 83,84. rel was according to the Abbot (knowing in what Women Hetl. 174. ty of her Husband: The Abbot (knowing in what Women Herk 174. repose Delight) faid to her, That if she would be rul'd by him, that she should have as good Apparel as any Woman in the Parith, and folicited her Chassity; when the Woman T. 25 El. in B.R. would not confent to him, the Abbot affaulted her, and 2 Inft. 492, would have made her an ill Woman against her Will, which 27 H. 8. 14. b. the would not fuffer, whereupon the Abbot kept her in his Cr. Car. 229. Chamber against her Will, and to the Intent, &c. The Huf. 5 Co. 51. 2. band having Notice of this Abuse to his Wife, spoke of all Br. Prohibition this Matter and faid, That he would have his Action of falfe 14. imprisonment against the Abbot, for that he had imprison'd his Wife; whereupon the Abbot (adding one Sin to another) fued the innoc. and poor Husb. for Defamat. in the Spirit. Court, because the Husb. had published, that the Lord Abbot had solicited his Wife's Chastity, and would have made her an ill Wo-

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man: But upon all this Matter disclos, to the Court, the Hush had a Prohibition, because the Husband might have an Action at the Common Law for this Assault, and Imprisonment of his Wife, altho' he then had no Action, nor perhaps never would; yet because the Scandal determinable in the Eccle. fiastical Court, was upon the Matter disclos'd, mix'd with Matter determinable at the Common Law, for this Cause upon a Motion made by the Abbot's Counsel to have a Consultation in that Case, it was deny'd by the Court. Vide 18 E. 4. 6. 12 H. 7. 22. Regist. 46, 47, & 54. As to the third, vide the Statute of Articuli Cleri, cap. 1, 2, & 3, and the Statute of Circumspecte agatis, anno 13 E. 1. and F. N.B. 51. J. K. 52. D. M. 53. A. F. So it appears there, if a Par-fon fues in the Spiritual Court for laying violent Hands upon him, and to have him excommunicated, or have corpo. ral Punishment, and not for Damages or Amends; but the Plaintiff shall recover Costs there: And if the Defendant in Case of Defamation is put to corporal Punishment, or for laying violent Hands upon Clerks, Oc. if the Party will redeem his Penance, and agree to pay the Party damnify'd a certain Sum of Money, it appears there, that the Party dampnify'd shall have Suit for this in the Spiritual Court, and no Prohibition lies; and upon these Differences you will better understand the better Opinion in 12 H. 7. 22. and the Sense of the Regist. 54. where all the Justices refused to grant a Consultation in Case of Defamation, id eft, either because the Matter of the Defamation was not meer and sole spiritual, or that the Plaintiff su'd for Damages or Amends for fuch Defamation; and therewith agrees F. N. B. 53. f.

Inft. 487, 488,

Market Annie

These Resolutions concerning Scandals (which I amongst many others for my private Instruction have observ'd) at the importunate Request and Desire of my good Friends, some in the Realm of Ireland, and others dwelling in the remote Parts of England, out of the Meridian of Westminster, I have reported, but in a Summary and succinet Manner, as you see, omitting many others which I do not think necessary to be publish'd, my Opinion always being, Quod multo utilius est pauca idonea effundere, quam multis inutilibus homines gravari. And nevertheless these brief Resolutions, and the Reason of them being well understood, and observed, will peradventure give great Direction and Instruction pro multis aliis, and will deter Men, for Words which are but Wind, from subjecting themselves to Actions, in which Damages and Costs are to be recover'd, which sometimes trench to the great

Hindrance and Impoverishment of the Speakers,

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A LOS CONTRACTOR AND A

William and bear west bloom (ne, vita ii) a Copyhold

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# Copyhold Cases.

Opyholder in Fee by Licence made a Lease for Years, Brown's Case, the Lesse entred; the Copyholder having Issue a Son M. 23 & 24 Elizand a Daughter by one Venter, and a Son by another, dy'd; Moor 125, 126, the eldest Son dy'd before Admittance; it was adjudg'd, that 1 Leon. 4. the Land should descend to the Daughter of the whole Blood. And in this Case three Points were resolv'd per totam Curiam.

1. Altho' a Copyholder has in Judgment of Law but an The I Point 1. Altho' a Copyholder has in judgated and fix'd his (4) 3 Co. 8. a. Estate at Will, (a) yet Custom has so established and fix'd his (4) 3 Co. 8. a. Estate at Will, (by the Custom of the Manor it is descendible, 10. 105. b. and his Heirs shall inherit it, and therefore his Estate is not 6 Co. 37. b. meerly ad voluntatem Domini, but ad voluntatem Domini fe-Cr. Car. 45. cundum consuetudinem manerii: So that the Custom of the Ma-Co. Lit. 60. b. nor is the (b) Soul and Life of Copyhold Estates, for with- 2 Co. 17 out Custom, or if they break their Custom, they are subject Moor 60, 61. to the Lords Will; and by Custom a Copyholder is as well (6) Hetly 6. P inheritable to have his Land according to the Custom, as he 23. b. who has Freehold at the Common Law, for (c) Consuctudo eff (c) Co.Lit. 58.6. altera lex: Custom and Usage from Time whereof, &c. may ereate and consolidate Inheritances ; for (d) Consuetudo vincit (d) Co.Lit.33.6. commun' legem. And Copyhold Estates are of great Antiquity, for \* Bracton, who wrote in the Time of the Reign of K. H. 3. Pofter 24. b. writes of them, lib. 2. cap. 8. where he fays, Si ipfe ad alium Co. L transferre voluerit, prins illud restituat Domino, vel servienti (id Brad. lib.2. c. 8. est Seneschallo manerii) si Dominus prasens non fuerit, & de manibus illorum fiat translatio ad alium, Oc. quia ille non habet potestatem transferendi, cum liberum tenementum non habeat. Et eodem libro, folio 76. Et semper in hujusmodi socagiis consuetudo loci est observanda. Anno 4 E. I. (who was the Son of H. 3.) by the Stat. call'd (e) Extenta Manerii, there it is faid, (e) Colingsa. Inquirend' est de liberis tenentibus quibuscung; &c. Inquirend est stiam de custumariis, viz. Quot sunt custumarii, & quantum terre quilibet

quilib' custumar' teneat, qua opera quas consuetud' faciat, & quant' opera & consuetud' cujustib' custum' valeant per ann' & quant' reddit' de reddit' Affifa per ann', prater opera & consuetud' qua poffunt talliari, & que non ad voluntat' Domini. By which it appears, that the whole Parliament esteemed of them as of customary Tenants; 2. That their Rent is accounted Parcel of the Rent of Affife: 3. That some of their Customs within some Ma-(a) Co.Lit. 50.b. nors are arbitrary at the Lords Will, (a) as Fines incertain. Poffer 27.b &c. and within some Manors their Customs are certain, and

all that as Custom has allow d.

42 E. 3. 25. 1 Rolls 506.

42 E. 3. 25. a. b. The Lord brought an Action of Trespass against his Copyholder, who pleaded, not guilty; \* The Jury gave a special Verdict, that the Copyholder had not done his Services, by which he broke the Custom of the Manor, for which Reason the Entry of the Lord was adjudg'd lawful, and that he should have the Corn then growing; which proves that he enter'd for the Forfeiture, and could not put him out without Caufe : So 33 E. 3. Trefp. 254. If a Copyholder makes an Alienation, it is a Diffeifin to the Lord, and a Forfeiture of his Estate.

13 R. 2 (6) Co. Lit. 60.2

13 R. 2. Faux Imprisonment 7. It is there adjudg'd, that where an Heir of a Copyholder recover'd in a Plaint in the Nature of an Affise of Mortdancester, in the Court of the Bi-shop of London, of his Manor of Stepney in Middlesex, the Tenant brought a Writ of false Judgment returnable in C. B. which Writ of (b) false Judgment did not lie in that Case; But there it is said, that he has no other Reme-Lices b. dy, but to fue to the Lord, who has the Freehold by (c) Petition, and he may if there be Cause, reverse the Judgment; by which it appears, that the Heir of a Copyholder is inheritable according to the Cuftom, and shall recover by Plaint in Nature of an Affise of Mordancester; but it is true that Charleton there fays, that he shall not have an Assise against his Lord as Tenant in ancient Demefne shall have, because he has not the Freehold, as Bracton fays.

s H. 4. 12.2.

2 (d) H. 4. 12. a. A Copyholder brought an Action of Tref-OFitzTresp. 168 pass for breaking his Close, and cutting his Trees, and the stresp. 73. Defendant pleaded not guilty, the Jury found the Defendant guilty; and affessed Damages, and the Plaintiff recovered.

1 H. 5. 11, 12. A Copyholder may furrender to the Use of another, referving Rent with Condit. of Re-entry for Nonpayment, and for Default of Payment, may re-enter, 4 H. 6. 11 6 21 H.6. 37. If a Bishop grants customary Lands by Copy and dies, the Copyhold is not determin'd by his Death, for he was Dominus pro tempore, and this Grant shall bind the King, and the Grantee, (the Temporalities being in the King's Hands) shall have Aid of the King.

7 E. 4

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7 E. 4. (4) Danby Chief Justice said, That 2 Copyholder 7 E. 4. 19.2. is as well inheritable to have his Land according to the Cu-(a) Co. Lit. Se flom, as he who has a Freehold at the Common Law.

21 E. 4. 80. b. (b) Brian faid, that his Opinion always had a Leon. 200 been and ever should be, That if such Tenant by the Custom 21 E.4.80-b paying his Services be ejected by his Lord, that he should have (b) 2 Leon-309 an Action of Trespass.

(c) 15 H. 7. 10. a. & (d) 27 H. 8. 28. a. b. A Bishop grants 15 H.7.10.b. Lands by Copy and dies, the Temporalities come into the 27 H. 8. 28. King's Hands, the Copyhold Estate stands, and he shall have (c) Pitz Aid de Roy of. Aid of the King.

15 H. 8. Tenant per Copy Brook 24. The Heir of a Copyholder (d) Br. Aid de Roy45 enant in Tail shall recover in a (1) Tenant in Tail shall recover in a (e) Formedon in the Discen-Roy 1. der per omnes Justiciarios. By which Cases it appears, that (.) Rol. 348. the Judges in all Successions of Ages have allow'd Copyhold Co Lic. 60. h. Estates to be establish'd and fure by the Custom of the Manor, Cr. Car. 43, 430 and descendible to their Heirs as other Inheritances are.

2. It was resolv'd, when Custom has created such Inheri- The 2 Point. tances, and that the Land shall be descendible, then the Law will direct the Descent according to the Maxims and Rules analy of the Common Law, as (f) Incidents to every Estate de- (1) Postes 23.20 scendible; Quia quod tacite intelligitur deesse non videtur. 5 E. 4. 7. b. when Uses had gain'd the Reputation of Inheritances descendible, the Common Law directed the Descent (8) 1 Co. 88. a of them, and that there should be possession fratris (g) of an (8) 1 Co. 88. a of them, and that there should be possession fratris (g) of an (8) 1 Co. 88. a Use, as well as of other Inheritances at the Common Law: Dy tob. 11.4 p But it was resolved, that such customary Inheritances should to Br. Delcen not have by the Law any other collateral Qualities which do Bac. Re not concern the Descent of the Inheritance, which other 27 H.S.c. to p. Inheritances at the Common Law had: And therefore fuch i And. 192. customary Inheritance should not be \* Affets to charge the Co. Lit. 14. b. Heir in an Action of Debt, on a Bond made by his Ancestor, \* Poph. 188. altho' he binds himself and his Heirs, neither shall the Wife of such customary Tenant be (h) endow'd, nor shall the Hush. (h) 2 Bulstr. 337 of a Woman Inheretrix, of such Estate be + Tenant by the Co. Lit. 33. 2. Courtesse, nor shall a (i) Descent of such Estate toll the En-2 Sid. 139. try of him who has a customary Right to it, & sic de cateris; † Cro. El. 361. for as without Custom such Estate at Will can't be descendi-Hutt.17.Mo.272, ble, so without Custom it man't be descendible, so without Custom it can't have any (k) collateral Qua-Postea 22. b.
lity or Incident to other Inheritances at Common Law: For I And. 192.
Copyholders have Estates of Inheritances secundum quid, that (i) Postea 23. 2.
is to say to be descendible by Custom Control of the control of the is to fay, to be descendible by Custom to their Heirs, and (s) Hob.215,216, not to be determined by their Deaths, nor subject to the Lords Will, as other Estates at Will are, but they are not Estates of Inheritance simpliciter, f. to all other collateral Qualities, but fuch as Custom has allow'd, or are incident to them.

15. H. 8.

Copybold Cafes. PART IV. iht or Benks 9 Battel bbl. The 3Point. 3. It was resolved, That where the customary Estate of (a) 1 Roll. 502. Inheritance descends to the Heir, (a) before Admittance py. 291. pl. 69. he may enter and take the Prosits, and that shall be a (b) postre. Lane 20. Poph.; he may enter and take the Prosits, and that shall be a (b) postre. Lane 20. Poph.; he may enter and take the Prosits, and that shall be a (b) postre. Lane 20. Jessie file fratris before Admittance on an actual Possession as in the Case at Bar: And such Heir may surrender to the Ld. the Cafe at Bar : And fuch Heir may furrender to the Ld. to the Yelv. 144, 145. use of anoth. before Admitt. as any other Copynoider may, but Brown 145. it cant' prejudice the Lord of his Fine due to him by the Cu.
597. Poph. 35. stom of the Manor upon the Descent, and he is a Tenant by Roll. 502.

Copy of Court-Roll, for the Copy made to his Ancestor beuse of anoth. before Admitt. as any other Copyholder may, but stom of the Manor upon the Descent, and he is a Tenant by (c)Cr.El.504,660 longs to him; as the (c) Admittance of a Tenant for Life, Cr. Jac. 31.

1 Vent. 260.

3 Keb. 329.

him, but shall not bar the Lord of his Fine, which have by the Custom: And altho' it was objected, that event mod. Rep. 102. to have by the Custom: And altho' it was objected, that event mod. Rep. 102. to have by the Custom: And altho' it was objected, that event mod. 201. is the (c) Admittance of him in remainder to vest the Estatein Co. 23. 2. Noy 29. 2 Ventr. 182. vest in the Heir before Admittance. To that it was answer'd and resolv'd, That true it is, that after Admittance the Heir (d) Winch. 67. may in pleading alledge (e) it as a Grant, and that has been Cr. Jac. 103, (e) Doct. pla. 80. allow'd to avoid the Inconvenience which would otherwise (f) Doc. pla, 80, ensue; for if the Copyholder should in pleading (f) be compelled to shew the first Grant, either it was before Time of Memory, and then it's not pleadable, or within Time of Memory, and then the Custom fails, and therefore the Law has allow'd the Copyholder in pleading to alledge any Admir-(2) Dod.ph.80. tance, as well upon a Descent (g) as upon Surrend. as a Grant; (6) rod. pla, 80. and yet he may, if he will alledge the (h) Admittance of his 2. pla. 80. Ancestor as a Grant, (i) and shew the Descent to him, and Cr. Jac. 103. that he entred, and well without any Admittance of him; (k) Dock. pla. 80. but the Heir can't (k) plead, That his Father was feised in Fee at the Will of the Lord by Copy of Court Roll of such a Manor according to the Custom of the Manor, and that he dy'd feised, and that it descended to him, for in Truth such (1) Dock. pla. 80. Interest is but a (1) particular Interest at will in Judgment of Law, altho'it is descendible, as has been said, by Custom: For he is a Tenant at the Will of the Lord according to the Custom of the Manor. Nota Reader, all these Resolutions and Opinions have been confirm'd and adjudg'd, as appears by the Cases following: It was agreed by the two Chief Justices, Wray and Anderson, Lem Affizes Justices of Assistance upon Evidence to a Jury, that where a er's Cale. (m) Antea 22 2, and the Wife dies, that the Hulband shall not be Tenant Cr. El. 361.

Hut.17. 2 Bulft by the Courtely without special Custom, according to the ReHut.17. 2 Bulft by the Courtely without special Custom, according to the Re337. Mo.272,397 Solution aforesaid; and according to their Opinions the Jury
1 Roll. Rep. 126. passed against the Husband, passed against the Husband, z Anderf. 192.

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It was adjudg'd, that where by the Custom of the Manor, . 3. Plaints have been made in the Court of the Manor in Nature Trin 36 Eliz Plaints have been made in the Court of the Manor in Nature Trin 36 Eliz.

of real Actions, that if a Recovery be in a Plaint in Nature Rot. 547 in B.R.
of a real Action against Tenant in Tail (admitting that Co-Rigden.

pyhold Land may be (b) entailed) that it should be a Difcontinuance, and should toll the Entry of the Heir in Tail; Indoor 358.

Cro. Eliz. 372.
continuance, and should toll the Entry of the Heir in Tail; Indoor 358.

ranted by the Custom, it is an Incident which the Law annexes to the said Custom, that such Recov. shall make a(c) Difcontinuance, which agrees with the Reason of the principal 1 Rol. 508, 634.

Point in Brown's Case. Point in Brown's Cafe.

It was adjudg'd, That if a Man feifed of Copyhold Land Cr. Car. 43. in the Right of his Wife, surrenders it to the Use of ano- 392, 1 Role 634. ther in Fee, who is admitted accordingly, the Husband dies, 4. it is no (d) Discontinuance to the Wife or her Heirs, but Pasch. 35 El. in that the Wife may enter, and shall not be put to Cui in inter Butlock & vita, nor her Heir to Sur cui in vita. And if a Copyholder Dibley in Transfor Life surrenders to the Use of another in Fee, it is no (d) Moor 596. (e) Forfeiture, for it passes by Surrender to the Lord, and Poph. 28. 39. not by Livery; and Copyhold Estates shall not have such a Roll. 632.

Qualities as Estates at Common Law have without special Cro. Car. 7.

Custom as has been of conformation.

Custom, as has been often faid.

In this Case two Points were adjudg'd. I. That (h) a De-Wright & Portfcent of a Copyhold in Fee shall not toll the Entry of him who man. (e) Cart-has Right to the Copyhold, which agrees with the Resolu-in C. B. inter tion in Brown's and the other Cases before. 2. That where the Foxton & Col-Custom of the Manor of Allestey in the County of Warwick, ment given. was, That Copyhold Lands may be granted to any Person in feede simplici, that a Grant to one and his Heirs of his (i) Bo- M. 35 & 36 EL. dy is within the Custom: For be it a Fee-simple conditio- Gravenor & nal, or an Estate Tail, it is within the Custom. So he may Ted.
grant for Life or for Years by the same Custom, for an E-Cro. Jac. 36.
state in Fee-simple includes all; and it is a Maxim in Law, (b) Cr. El. 148,

\* Cui licet quod majus, non debet quod minus est non licere.

Cro. Car. 42,43,

\* Cut licet quod majus, non debet quod minus est non licere.

Cro. Car. 42,43,

Rich. (k) Fitch, the Father, Copyholder in Fee, makes a 44, 45. Poph. 33.

Surrender to the Use of himself for Life, and after to the Godb. 367, 368,

Use of Rich. his Son for Life, and after to the Use of his Last 369. 3 Co. 8, 9.

Will the Father is admitted and discounted and of the control of the Co. Lit. 66. 2. b. Will; the Father is admitted and dies, and afterwards the 1 Rol. Rep. 48,49.

Lord pretending Cause of Forseiture grants it to a Stranger: 2 Rol. Rep. 383.

Lord pretending Cause of Forseiture grants it to a Stranger: 2 Rol. Rep. 383. In this Case two Points were adjudg'd. 1. That the Admit- 165, 166, 167. tance (1) of Tenant for Life, was Admittance of him in 1 Roll. 838. the Remainder, but not to prejudice the Lord of his Fine, 1 Leon 174, 175-which was due by the Custom of the Manor according to the Godb. 20. Opinion in Brown's Case. 2. It was adjudg'd, that the Fee Co. Lit. 52. b. simple of the Copyhold being limited to the Use of his Will, Cr. El. 323, 373. simple of the Copyholder, and not in the Lord.

[m] remain'd in the Copyholder, and not in the Lord.

Three Leon. 64.

9 Co. 48. b. Pasch. 36 Eliz. in B. R. Rot. 331. inter Fitch & Huckley. (k) Cr. El. 441, 442. (l) Cr. El. 148, 442. (m) Cr. El. 504, 662. Cro. Jac. 31. Noy 29. Moor 358, 465. I Mod. Rep. 103. 2 Brownl. 301. 1 Roll. 505. 1 Vent. 260. 3 Kelw. 329.

Like Judgm. in-

\* 5 Co. 7. a. Cawdry's Cafe

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Cr. Jac. 98. Roll. 41.

Three Points were adjudg'd: 1. That the Heir of a Co. pyholder may enter and have an Action of Trespass (a) before Admission, and so if such Heir dies before Admission (as the principal Case was) his Heir may enter and take or. pl. 69. Cr. El. the Profits, and have an Action of Trespass, which agrees with the Judgment in the principal Point in Brown's Case; and in this Case Wray Chief Justice said, that 'twas now late. Mooris, 126, that there thould be (b) pojjej jest adjudg'd, that where the Copyhold before Admittance. 2. It was adjudg'd, that where the King H. 8. granted a Manor to the Queen his Wife for Life, Mooris, 126, that there the (c) Queen was a fole Person exempt by the Pref. 6. Common Law, and may make a Lease of the pref. 6. Collin. King, and fo may plead and be impleaded alone.

2. 133. 2. 10 E. 3. 18 & 50. 18 E. 3. 1, 2, & 32. 20 E. 3. No. 18 E. 3. 1, 2, & 32. 20 E. 3. No. 20 E. 3. Brief 346. 49 E. 3. 4. 11 H. 6. 67. 20 E. 3. 4. 11 Common Law, and may make a Lease or Grant without the 2 133. 2. 10 E. 3. 18 & 50. 18 E. 3. 1, 2, & 32. 20 E. 3. Nonability ld. Tit. of Ho- 9. 32 E. 3. Brief 346. 49 E. 3. 4. 11 H. 6. 67. 26 H. 6. Co. 47. 2. Aide del Roy 24. 3 H. 7. 14. 7 H. 7. 7. and that the State Nonability 9 tute of 32 H. 8. is but a Declaration of the Common Law. 3. It was adjudg'd, that where the Queen was Tenant for Life, and a Copyhold of Inheritance escheated to her, there the Queen may grant it to whom she pleases, and it shall bind the King, his Heirs and Successors for ever; for the was Domina pro, temp' and the Custom of the Manor shall bind the K. (d) Co.Lit. 58.b. And it was refolv'd that every one who has a (d) lawful Estate or Interest in a Manor, be it in Fee, in Tail, in Dower, or Tenant by the Courtesy, or for Life, or Years, or as Guardian, or Tenant by Statute, or Elegit, or at Will, if a Copyhold escheats or comes to their Hands during their Time, every one of them at their Wills may regrant it reddend the ancient Rent, Customs, and Services, and it shall bind the every one of 'em is Dominus pro tempore, and within the Cub) 6Co. 60. b. s.a from; as in 20 H. 6. 8. b. the Chief Justice (e) of the Comby: 71. pl. 44 mon Pleas who has his Office has been proposed in the Com-Lord who has the Inheritance or Freehold of the Manor, for mon Pleas, who has his Office but at Will, may by Custom grant Offices for Life: and it is to be observ'd, that a Copyholder doth not derive his Estate out of the Estate or Interest of the Lord only, for then the Copyhold Estate would cease when the Estate of the Lord determines. But as it was faid in Brown's Cafe, \* the Soul and Life of a Copyhold is the Custom of the Manor; and when the Grant is made by any who has a lawful Estate, or Interest, the Copyholder is in by the Custom without any Regard to the Estate, or Person of the Grantor, and therefore such Grant made by Husband and Wife shall bind the Wife notwithstanding the Coverture: So of a Grant made by Non compos mentis, or an Infant, of by a Bishop, Prebendary, Parson, &c. it shall bind for ever; For the Custom is, that the Tenem. are Parcel of the Man. El dimiss & dimissib' per Dom' Man' &c. pro temp' exist', seu per esus Sene sch', &c. And fo a Feme Covert, Non comp' ment', an Infant, Co.

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the Successors of Bishops, Prebendaries Parsons, &c. are bound by the faid Custom: But by Force of these Words in the faid Cuftom (per Dom' Maner' &c. pro temp' exift') in some Case the Lord ought to have lawful Estate, and in some Cafe not, And theref. this Difference was unanimously agreed: if a Diffeisor, or Feoffee of a Diffeisor, or any other who has a pricious or defeasible Estate or Interest subject to the Action, or Entry of another, holds Court, and makes any voluntary (a) Grant upon Escheat, or Forseiture of a Copyhold, such voluntary Grant shall not bind him who has Right, when (a) Co.Lit. 18.6. he has recontinu'd the Manor by Action, or Entry; for to 1 Co. 140. b. this Intent the faid Custom shall be intended of a Lord who I Roll. 499 has a lawful Estate or Interest: But if such Lord who has a Mo. 112, 236,237 wrongful or defealible Estate, (b) admits any upon Surrender Dal. 83. made to the Use of another, or admits the Heir upon a De-(b) 1 Roll. 503. scent, such Admittances are good, and within the said Cu-1 Co. 140. b. show; for such Acts are lawful, and quodam modo judicial, to Cr. El. 699. do which he may be compell'd and enforc'd in a Court of Co. Lit. 58. b. Equity, and therefore such Admittances shall bind him who Poph. 71. has Right.

It was adjudg'd, that where the Lord of a Manor wherein were many Copyholders for Lives took a Wife, and afterwards a Copyholder dy'd, the Lord after Marriage granted the P. 26 El in B. R. Land again according to the Custom of the Manor for Lives, Mo. 758, 812. and died, that the Wife should not (c) avoid these Grants in 2 Brownl. 208. a Writ of Dower; for altho' the Grant was after the Title Bridgm. 51. of Dower, yet the Custom which is the Life and Force of Godb. 130. the Grant, was long before: And an Opinion in 8 Eliz. was 2 Siderf. 82 cited to the contrary, (which now vide Dyer 251.) and yet Dy. 251. pl. 84. Judgment ut supra. If Feoffee of a Manor upon Condition makes voluntary Grants of Copyhold Estates according to the Custom, and afterwards the Condition is broke, and the reoffor re-enters, yet the Grants by Copy shall stand; and therewith agrees the Judgment anno 17 Eliz. the Earl of Arindel's Case, Dyer 342.

It was adjudg'd, if Tenant pur (d) auter vie be of a Ma-P. 29. El. inter nor, and Cestury que vie dies, and he who was Tenant for Life in B. R. continues in the Manor, and holds Courts, and makes volun-(4) Moor 236.

tary (e) Grants by Copy, they shall not bind the Lessor; 2 Lcon. 45, 46.

(it is otherwise of (f) Admittances on Surrender to the (e) Co. Lit. 58.b.

Use of others, or upon Descent) for in such Case it was re-Cr. El. 699.

folved, that he was Tenant at Sufferance, who has no lawful 1 Roll. 499.

Interest; Moo. 112, 236, 2376.

Dal. 83.

Dal. 83. continues in the Manor, and holds Courts, and makes volun- (4) Moor 236.

(f) Co. Lit. 58. b. 1 Roll. 503. 1 Co. 140. b. Moor 112, 237. Cr. El 699. Poph. 71. 3 Bulft. 215.

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Interest; and a Writ of Entry ad Terminum qui prateriit lies against him, and so he is a Disseisor of the Manor.

1. 33 & 34 El. B. R. inter furrel & Smith respass. Cr. El. 252. Lcon, 209.

Upon a special Verdict the Case was such; Queen Eliza feised in Fee of the Manor of Bawdesey Butley in Suffolk, granted Part of it being ancient Copyhold Land to Smith the Father in Fee; and afterwards the Queen granted the Inheritance of the faid Copyhold to a Stranger in Fee: and afterwards Smith made his Will in Writing, and thereby devised the Copyhold to Murrell the Plaintiff in Fee; and at a Court held at the faid Manor furrender'd into the Hands of the Queen, Lady of the said Manor, to the Use of his Will; and in pleading, Smith the Defendant alledged the faid Grant made to his Father, by Force whereof he was feifed, Oc. and so seised, died seised, and that it descended to the Defendant as his Son and Heir, and the Plaintiff claiming by the faid Devise and Surrender, traversed the Descent to the Defendant: And the Jurors upon this special Issue. gave the said special Verdict; and upon great Advice and Deliberation Judgment was given against the Plaintiff; and The I Point in this Case three Points were resolv'd. I. That Custom has so establish'd and fix'd the Estate of a Copyholder, that by the (b) Severance of the Inherit. of the Copyhold from the Manor, the Copyhold is not destroy'd, for inasmuch as the Lord himself cannot oust the Copyholder, no more can any claiming under him do it; for (c) Nemo potest plus juris ad alium transferre, quam ipse habet; & quod per me non possum, nec per alium. But it was objected, that every Copyhold Estate in any Land or Tenem. ought to stand upon two Pillars, and without either of them can't be supported; the one that (d) Co. Lit. 58.b the Land or Tenement be (d) Parcel of the Manor, the other that such Land or Tenement has been demised (e) and demisable Time out of Mind, so that parcel of the Manor, and Prescription are two Incidents to every Copyhold; but in the Case at Bar one of them fails, for by the said Severance the Land was not Parcel of the Manor. To which it was answer'd and resolv'd, forasmuch as the Land was Parcel of the Manor, and Custom has once establish'd and fix'd the Estate, so that once it had both the Incidents, for this Cause the Severance made by the Lord after the Estate has had its Perfection, shall not destroy the Estate of the Copy-The 2 Point holder. 2. That in this Casethe said customary Lands descended to the Def. notwithst. the Devise and Surrend. for the Surrend. after the Severance of the Inherit. of the Copyhold from the Manor was utterly void, because the Lands were not Parcel of the Manor at the Time of the Surrender, and the Devise

alone can't transfer such customary Estate; for as it appears

by \* Brallon before, and by Litt. f. 15. b. it can't be transfer. but by (f) Surrend. into the Hands of the Ld. accord. to the Cuft.

(b) 8 Co. 64. 2. 2 Co. 17. 2. Poftea 26. b. Cr. El. 103. Cr. Jac. 573. Hob. 181. (c) 5 Co. 113. 2 6 Co. 57,b. 68. 8 Co. 63. b. Co. Lit. 309. b.

(e) Co.Lit. 58.b. Poftea 31. b.

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of the Manor. 3. That after the Severance, the Copyholder The 3 Point shall pay his Rent to the Feoffee, and also shall pay and do other (a) Services which are due without Admittance or (a) Cr. El 252. holding of any Court; as to plough the Lords Demeans, Heriot, and fuch like; but Suit of (b) Court, and fine upon (b) Cro. El. 2524 Alienation, or Admittance, are gone: For now the Land or Moor 393. Tenement can't be aliened, for as the Copyholder has some Benefit by his Severance, as appears before, so has he great Prejudice, for now he can't (c) furrender or alien his Estate, (c) Cr. El. 2522 because he can't alien it by Surrender in manus Domini servitiorum, as the Custom has warranted, and that he can't now do, nor can the Feoffee make Admittance or Grant of the Copyhold, for he is not Dominus pro tempore: But it was refolv'd, that fuch (d) Forfeitures as were Forfeitures before the (d)Cr.El.252,499 Severance, as the making of a Feoffment, Leafe, Wast, de-2 Leon. 203. nying of Rent, or such like, are Forfeitures also after the Se- 1 Bulft. 51. verance. So if Land was of the Nature of Borough English or Gavelkind before the fame Custom, all other Customs which run with the Land, shall remain after the Severance: And it was faid, if fuch Copyholder will alien, there is no Means but to have a Decree against him and his Heirs in Chancery, but thereby the Interest of the Land is not bound, but the Person only.

THE Case was, a Copyholder in Fee of the Manor of the Dean and Chapter of Westminster, call'd Launton in the P. 31 El. inter County of Oxford, furrender'd his Copyhold Lands out of Kite & Queinton Court, by the Hands of certain Copyhold Tenants accord- (a) Co.Lit.62.2. ing to the Custom of the Manor, to the Use of another and his Heirs upon certain Conditions, and after at the next Court, the Surrender was presented, but in the Presentment the (b) Conditions were omitted, and he to whose Use the (b) 1 Roll. 504. Surrender was made being (c) dead, the Lord by the Stew- (c) Poster 29. b. ard, according to the Custom, admitted his Daughters and Bridgm. 51. Heirs, who entred; he who made the Surrender by his Deed, released to the Daughters being in Possession, and afterwards entred upon them, and if his Entry was lawful or not was the Question: And it was adjudg'd, that his Entry was not lawful; and in this Case, two Points were resolv'd, 1. That the Presentment of the said Surrender was (d) void, for the (d) 1 Roll. 501. Surrender out of Court ought by the Custom of the Manor, to be presented in Court; but forasmuch as the Surrender was upon Condition, and the Presentment was of an absolute Surrender, the Surrender which the Copyholder made was not presented: But if the Truth of the Case was, that the Surrender conditional was presented, and the (e) Steward (e) 1 Rol. 5012 in entring thereof omitted the Condition, yet upon good Proof thereof, the Surrender should not be avoided, but the E

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Roll should be (a) mended, for the Roll should not (b) conclude in fuch Case the Party either to plead, or give in Evidence the Truth of the Matter. The 2d Question and the greater Doubt was, If by the faid Release by Deed, the Customary Right of the Copyholder was extinct, and he who made the Surrender barr'd of his Right. And it was object. ed that Littleton Fol. 15. b. faith, That a Copyholder can't (1) Lir. Sect. 74. alien his Land by (c) Deed; but if he will alien, he ought

Co.Lit., 8.b. 59-2- according to the Custom, &c. furrender, Oc. And he faith, that fuch Tenants are call'd Tenants by Copy, because they have no other Evidence concerning their Tenements, but the Copies of the Court-Rolls. And it was faid, that that excludes all Releases by Deed, for then they would have other Evidences than the Court-Rolls. Also it was said, that he who Purchases the Land, may upon searching the Rolls be advised if the Title of the Land be good. But if a Release by Deed should extinguish Rights, then it would be very dangerous to Purchasors, for that doth not appear in the Rolls. To which it was answer'd and resolv'd, That the (d)Cr.Jac.36,101 (d) Release in the Case at Bar extinguish'd the Right of the Copyholder; and their Reason was, because he to whom

1 Leon. 102. 1 mult 104.

the Release was made was admitted to the Tenements, and Copyholder in Possession; so that a Release of the customary Right may enure to him, and therefore the Lord is not at any

Prejudice, for he has had his Fine upon Admittance, and he to whom the Release was made was in by Title, scil. by the Lords Admittance, and so the Release enures by way of Ex-(e) 1 Leon. 102. tinguishment: But if a Copyholder be (e) ousted by one by Tort, there his Release by Deed to the Disseisor, or other

> wrong Doer, doth not transfer his Right, nor bar him for two Reasons: 1. Because he has no customary Estate upon which the Release of the customary Right can enure. 2. It would be to the Lord's Prejudice, for thereby he would lofe

> his Fine and Services; and for these Reasons, the Release by Deed in such Case is utterly void, and this is not against any thing Littleton faith, for Littleton speaks of an Alienation by (f) Surrender, and that of Necessity ought to be into the

> the Case at Bar could not be made to the Lord, but to the Copyhold Tenant in Possession: Also he who claims a Copyhold Estate by Surrender, hath not other Evidences but Copies, and so are Littleton's Words to be intended. But he who

claims Extinguishment of a Right, may have it by Release by Deed: So the Resolution in Murrel's Case before well agrees with the Judgment in this Case upon the Difference

aforesaid, in transferring of an Estate, and extinguishing of a Right: And as to the Danger of Purchasers, it was faid, that there was not any Danger; for if the Copyholder who is in Possession sells it, he will shew the Pur-

chasor the Release made to him, and he who is out of

(f) Lit. Sca. 74. Co. Lit. 58.10.59.a. Lord's Hands, according to the Custom: But the Release in Antes 24 b.

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Possession, ought not to fell it 'till he has regain'd the Possesfion; and if any one will purchase any Title, he is not to be favour'd, but in such Case \* caveat empter : And yet he who . 5 Co. 84. 21 has made such Release, may and ought to acquaint the Bur-1 Roll Rep. 195. chafor with that which he himself has done, and so no Mis-2 Bulft. 337. chief. And Wray Chief Justice in this Case said, That if one who has pretended Right or Title (a) to Copyhold Land, (a) Co.Lit. 369.h. bargains and fells it to another, it is within the Statute of Cr. Car. 434 32 H. 8. cap. 9. for the Statute faith, If any bargain, buy, or fell, &c. any Right, or Title, in or to any Lands or Tenements? So that these Words, Any Right or Title, extend to all Manner of Rights or Titles, & per consequens to Copyhold Lands. And great Part of the Land of the Kingdom is in Grant by Copy; and therefore the Intent of the Makers of the Act (6) Dy 174 pl. 191 was to include it, for avoiding of Suits, Maintenance, and 20. Plowd: 77. be Champerty, and not to leave all Copyhold Estates to the Moor 266. Mischiess mention'd in the Preamble of the said Act, and es- Sav. 95, 96. pecially when a (b) Lease for Years has been adjudg'd in Par- 1 And. 75, 76; trige's and Croker's Cafe. Plow. (c) Com. 76. to be within the &c. 201, 202; faid Act. Dy. 374. pl. 16, 17. (c) Plowd. 77. 78, &c.

William (a) Melwich brought an Eject' firme against John Luter and Mary his Wife, on a Demise made by John 30 El. inter Mel-Melwych of Land in Estworth in the County of Salop, for one B. R. Year, Oc. The Defendant pleaded, not guilty; and the Jury (a)Cr.Elizo, 103 gave a special Verdict to this Effect: The Abbot of Tewksbury was feiled of the Manor of Boveridge, whereof the faid Tenements in which, &c. were Parcel, and Copyhold Land of the same Manor; and that there were many other ancient copyholds of the fame Manor in Effworth aforefaid, which Manor came to the King by Dissolution. And the King anno 87 H. 8. granted the Inheritance of all the Copyholds in Effworth, to John Ogden and his Heirs, who call'd it his Manor of Estworth: And afterwards a Copyholder of the Tenements aforefaid, in which, Oc. furrender'd them to the aid John Ogden, who also being seised of the Manor of Hara ridge within the same County, at Harbridge, granted the lenements in which, to John Melwych the Lessor of the Plain-If by Copy, according to the Custom of the Manor of Estfor Term of his Life, and that the Plaintiff was polelled 'till he was ejected by the Defendants, claiming it unr the Title of John Ogden, pretending that the faid Grant Copy did not bind him. And afterwards upon good Adle, Judgment was given for the Plaintiff; and in this Case

our Points were resolv'd.

1. That Lessee of a Copyho. (b) for one Year shall maintain The i Point (c) Ejest'sir; for inasm. as his Term is warranted by the Law Moor 679.

3. Bulstr. 214.

4. The gen. Cust. of the Realm, it is Reas. that if he be ejected, Bridgm. 49,501

E 2

that (b) 1 Roll. 846.

Hutt. 101.

) Cr. El. 102, 103, 134, 225, 394, 395. Cr. Jac. 403. 1 Leon. 318. Poph. 188. Owen 18. Lit.

Copybold Cafes. PART IV.

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that he should have Ejectione firma, and it is a speedy Course for a Copyholder to have the Possession of the Land against

a Stranger.

(a) Cr. El. 103. holds from the Manor, the Copyholds were not destroy'd.

Antea 24. b. L. 103. holds from the Manor, the Copyholds were not destroy'd. 2. That by the (a) Severance of the Inheritance of Copy. but remain'd of Force and Effect, which agrees with the faid Judgment in Murrel's Cafe. Co. 17. 2.

Cafe.

The 3 Point pyholds in one Town, grants the Inheritance of all the Copy. 394,395,443,662. Copyhold Tenements, and take Surrenders to the Use of others, and make Admittances and Grants: For altho' it is not a Manor in Law, because it wants free Tenants, yet as to the Copyhold Tenants, the Feoffee or Grantee has fuch a Manor, that he may hold a Court to make Admittances and Grants of the Copyhold Tenements: For every Manor which confifts of Freehold and Copyhold Tenements, comprehends (1) Co.Lit. 58.a. in itself in Effect two (c) several Courts; one which is com.

monly called the Court Baron, f. the Court of Freeholders. (a) Co.Lit. 58.2. and in this Court the (d) Suitors, f. the free Tenants are 4 Ce. 33. b. Judges, and therewith agree 7 H. 6. 39 H. 6. 5. 6 E. 43. 8 Co. 60. b. 12 H. 7. 16. Another Court is for the Copyholders, and as Godb. 49. 1 Rol. to that, the Lord or the (e) Steward of the Manor is Judge; 543. Cr. El. 792. and as the other is called the Freeholder's Court, so this may Cr. lat. 782. She called the Copyholder's Court: And therefore when the

4 Inft. 266, 268. be called the Copyholder's Court: And therefore when the 7 E. 4-23. a. Lord grants over the Inneritance of the Copyhold To21 E. 4-66. b.
21 Mod. Rep. 171. ther, the Grantee may hold fuch Court for the Copyhold To21 Mod. Rep. 171. ther, as his Grantor might. And as to this Court Br. Judges 18. Br. Court Earong it need not have any free Tenants; so if the Freeholds escheat,

or if the Lord releases the Tenure and Services of all his free Tenants, yet the Lord may hold a customary Court for his Copyhold Tenements, and make Admittances and Grants of them; (f) Benedicta est expositio, quando res redimitur s

destructione. Nota Reader, altho' the Lord by his own At can't (g) make of one and the same Manor at the Common Law fundry Manors confifting upon Demeans and Freehol-

ders, yet he may by his own Act, as by this Judgment appears, make a customary Manor confisting upon Copyholders,

The 4 Point as to the Purpofes aforesaid. 4. It was refolv'd, that the Lord (b) himself may make 2 500, 505. Grant or Admittance of a Copyhold out of the Manor at (1) Poster 27. 2. what Place he pleases; but the (i) Steward of the Court of Owen 35.
Co. Lit. 58. 2. a Manor, can't at any Court held out of the Manor make Grants or Admittances. 5(Bo Atd. Log.

B. N. C. 387.

Br. Court Baron T T was adjudged by Anderson Chief Justice of the Common Pleas, Walmesley, & totam Curiam, That where the Lord of a Manor demises all his Lands granted by Co-Cr. Fl. 194, 195. py to another for two thousand Years, that such Lessee Pasch. 37 El. in10 Neale & (a) may

B. N. C. 116. (e) Co. Lit. 58.2.

(1) Palm. 444. Poph. 166.

(e)Cr.El.39,103, 443.

(6) 1 Roll 499

Cr. El. 103. 21. Br. Tenant per Copy 26.

(e) may hold a Court for the Copyholds, according to the Jackson in C. R. Resolution of the third Point in Melwiche's Case. And in (a) Anter 16. b. this Case it was said, that so it was resolved by all the Justing 395, 443, 662. cer, in the Case of Sir Chr. (b) Hatton, late Lord Chancel. of (b) Cr. El. 103, 295, 443, 662. England touching Copyholds in Wellinborough in Northamptonshire: Nota Reader, a good Difference between these Cases which consist upon Numbers of Copyholds which may support a Custom, and one single Case of a Copyhold, as in Murrel's Case before, in which the Lord doth not grant tacite any customary Court, nor the Grantee having but one single Copyhold can't hold Court.

TWO Points were resolv'd by Wray Chief Justice, Sir Tho. Gawdy, & tot Cur', upon Evidence given to a Jury; Mich. 27 & 28E1. that if a Court be held by a Steward of a Manor (c) out of Molineux, in B.R. it, and divers Grants and Admittances there made; the (c) Antea 26. b Court and all the Grants and Admittances are void, for the Cr. El. 103. Court of the Manor ought to be held within the Manor, 1 Roll. 505. and not out of the Jurisdiction of it; which agrees with the Br. Court Baron Resolution of the fourth Point before, in Melwiche's Case. 22. Br. Tenant But it was refolv'd, that by (d) Custom the Court may be co. Lit. 58. held out of the Manor, and Grants and Admittances made (a) Co. Lir. 58.2, there good enough, as divers Abbots, Priors, &c. used to hold Cr. Car. 367. Courts at one Manor, for divers feveral Manors, and good by Custom. 2. It was resolv'd, that where a Woman Tenant for Life takes Husband, and the Husband commits Wast against the Custom of the Manor, and dies, the Estate of (e) 1 Rell. 5092 against the Custom of the Manor, and dies, the Estate of (e) 1 Rell. 5092 the Wife is utterly forfeited (e) by the Act of the Husband. 344, 361, 372. But if (f) a Stranger commits the Wast without the Assent Cr. El. 140. of the Husband, it is no Forfeiture; and according to this O.Bendl. 83,119 Refolution it was certify'd into the Chancery by Mead and Godb. 345. Periam, two of the Justices of the Common Pleas between the (f) 1 Roll. 508. lame Parties as to both Points, upon Conference had with divers other Justices.

If was resolved by Wray Chief Justice, Sir Thomas Gawdy, 15.

O' tot' Curiam, upon Evidence to a Jury, That if a Copy-Tr' 26 H. in B.R holder be seised by Force of several Copies, s. of Black Acre & Cromwell. by the Rent of 3 d. and of White Acre by the Rent of 4 d. (g) Cr. El. 353. and of Green Acre, by the Rent of 6 d. and afterwards the 288.

Copyholder commits (h) Wast in Part of Black Acre, or makes (h) 1 Bulst. 51. a Feossment of Part of Black Acre, or denies the Rent of that Acre, by that all Black Acre, or denies the Rent of that Acre, by that all Black Acre, is forfeited, (i) but it is (i) Cr. H. 352. no Forseiture of White Acre, nor of Green Acre. For altho they all are in one and the same Hand, yet every Acre is held severally, and to every Acre there is a several Condit, in Law (k) tacite annex'd, so as the Forseiture of the one can't be the Forseit. of any of the others, for the sev. Condit. in Law follow the sev. Tenures; and theres, the Forseit. of the one can't be the Forseit. of any of the others. So it was at the same Time resol.

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(e) 3 Leon. 209. Postes 28. 2-

That if the faid Copyholder of the faid three Acres feverally held as aforesaid, surrenders them to the Use of A. and his Heirs, and the Lord admits A. accordingly, (a) Tenendum per antiqua servitia inde prins debita & de jure consueta, or to fuch Effect; and after A. commits a Forfeiture in Black Are. he shall forfeit that only, and none of the others for the faid Tenendum (reddendo fingula fingulis) continues the feveral Te nures; and so it is not material whether the Copyholds be in one or feveral Copies, but whether the Tenure be one or feveral, is only material as to this Purpose; and so was it adjudg'd upon Demurrer, Hill. 35 Eliz. in C. B. inter James Taverner Pl. & Thomas Comwel Def. So if divers several Copyholds escheat to the Lord, and he regrants them to another, Tenend' per antiqua servitia, &c. they shall be fe. verally held as they were before the Escheat: And in this Case it was resolv'd, That when a Copyholder surrenders to the Use of another, and the Lord admits him, now he who is so admitted is (b) in by him who made the Surrender; and in Plaint in Nature of a Writ of Entry in the Per, shall be supposed in the Per by him who made the Surrender; for the Lord is but an (c) Instrument to make Admittance, and he who is admitted shall not be subject to the Charges or lacumbrances of the Lord: And so Reader, where it is said in the Case of Clifton & Molineux before, that by the Forfeiture of the Husband all the Estate of the Wife shall be forfeited, it is to be intended all the Copyhold Estate under the same Tenures.

(6) Poftea 28. b. 20. b. Mo. 358. Cr. El. 361. Co. Lit. 59. b. Bridgm. 51. 1 Roll. 503. Cr. Car. 205. (c) Cr. El. 3 11. Poftea 29. D. Bridgm. 51. I Roll. 503. 8 Co. 63, b. Moor 112.

> I PON Evidence to a Jury, these Points were resolvid Popham Chief Justice, Gawdy, Clench, and Fenner, Ju-

flices of the King's Bench.

1. That if the Fines of Copyholders of a Manor upon Admittance, be incertain, yet the Lord can't demand or exact (d) Mo. 622,623. excessive and (d) unreasonable Fines, and if he does, the Copyholder by the Law may deny to pay them without any Roll. 507, 523. Forfeiture; and it shall be determin'd by the Opinion of the Roll. 578.
Roll. Rep. 33. Justices, before whom the Matter is depending, either upon Demurrer, or upon Evidence to a Jury upon the Confession or Proof of the yearly Value of the Land, whether the Fine demanded was reasonable or not: For if the Lord might assess excessive Fines at their Pleasures, all the Estates of Copyholders, which are a great Part of the Realm, and which have continu'd from Time whereof &c. would be at the Wills of the Lords defeated and deftroy'd, which would be inconvenient. And it was faid, that according to this Re-(e) Cr.El 351,779 folution in this Point, it had been adjudg'd in C. B. in (e) Hole de don's Cale.

2. It was refolv'd, if the Lord in Cafe of Incertainty of Fines, affef. a reasonab. Fine, and requires the Copyh, to pay it

16. Mich. 42 & 43 El. in B. R. inter Hubbard & Hamond.

11 Co. 44.2. 13 Co. 3. 1 Browni. 186. Treby's Arguent in quo Warranto 34. Hob 135.Co.Lit. 56. b. 59. b.60.a. Antra 21. b. Vide supra 21.b. Brown's Case.

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the Copyholder is not bound (a) to pay it presently, because (a) Cr. El. 779. he can't tell what Fine the Lord will affels, Et \* Nemo te- Moor 623. neuer divinare; and therefore he can't provide any certain 550. Sum, and therefore he shall have convenient Time to pay Lit. Rep. 91 it if the Lord himself appoints no certain Day for Payment of it; But otherwise it is of Fines certain.

3. It was refolved, that where a Copyholder has feveral Lands severally held by several Services by Copy, there the Lord ought to affess and demand the Fines (b) feverally (b) Cr. El. 779. for every Parcel which is so severally held. For the Tenant may refuse (c) to pay the Fine for one Parcel and (c) Cr. Eiiz. forseit that, and pay the Fines for the others; And as it was agreed in Taverner's Case, every several Tenure has a several Condition in Law (d) tacite annexed to it; and (d) Antea 27.2. therefore the Lord ought for every feveral Tenure to affels and demand a feveral Fine: So if all the faid feveral Copyholds are furrender'd to the Use of another and his Heirs, and the Lord admits him (e) Tenendum per antiqua fer- (e) Antea 27. b. vitia inde prius debita & de jure consueta, there, as it was also resolved in Taverner's Case, the Tenures are several, and therefore the Fines ought to be severally affessed and demanded.

4. Popham Chief Justice said, it was adjudged in Sandes Cufe, that no Fine is due to the Lord either upon Surrender or Descent 'till Admittance; for the Admittance is the Cause of the Fine, and if after, the Tenant denies to pay the Fine, it is a Forfeiture. And so it was resolved by Wray and Periam Justices of Assis in Evidence to a Ju-ry in the County of Suff. inter Nicholas Bacon Knight. Pl. Flatman. & Flatman Def. for a Copyhold of the Manor of Walsham in the Willowes in the County of Suff.

THE Case was such; Alice Westwick was Copyholder of Tr. 33 Eliz. in the Tenements in which, &c.in Fee, held of the Manor v. Wyer & 11x. of Peter Leyflon in the County of Buck. and 12 H. 8 furrender'd the Tenements into the Hands of the Lord of the faid Manor to the Use of W. Westwick her Son in Fee; and at the next Court held 13 H. 8. for the same Manor, the Entry in the Roll was to this Effect; Ad hanc Curiam venerunt Will' Westwick & Johan' uxor ejus, O' ceperunt de Domino Tenementa præd' cum pertinentiis in quibus, &c. præf. W. Westwick & Joh' uxori ejus: Tenend' eisdem W. & J. & hered' suis, &c. And afterwards William died, and Jo. survived and surrendered the Tenements to the Use of the Defendants, who entred, upon whom the Plaintiff as Cousin and Heir of William Westwick entred, and the Defts. re-entred; And the Pl. brought an Action of Trespais, and all this was found in a special Verdict: And it was argued by the Pl'ts Council, that the Plaintiff ought to have Judg-

VAa2.195. Copybold Cafes. PART IV. ment for divers Reasons. 1. When Alice Westwick furrender'd her Land to the Lord of the Manor to the Use of W. W. by the Surrender the Estate of the Copyholder is in the Lord, which he might grant to any Stranger, as the Feoffees to an Use might at the Common Law; and W. W. (a) Cr. Jec. 368. had no Remedy but in a Court of (a) Equity to compel the Lord to admit him, & per consequens when the Lord grants the Land to W. Westwick and his Wife in Fee, it is a good Grant to both. 2. Will' Westwick in the Case at Bar, having but Remedy in Equity to be admitted to the Land, it shall be intended that W. Westwick requested the Lord to make a Grant to him and his Wife, for fo much is implied in it, when it is faid, Quod ad hanc Curiam venerunt W. Westwick & Johan' uxor ejus, & ceperunt, &c. and every Admittance of a Copyhold amounts in Law to a Grant, wherefore they conceived that Judgment ought to be given for the Plaintiff. To which it was answered and resolved by the Court, That as to the first Reason the Plaintiff's Council had mistaken the Law. For when A. W. furrender'd the Land to the Lord to the Use of W. W. the Lord by the Custom (which makes the Law in such (6) 8 Co. 135. b. Case) had but a customary Power to make Admittance (b) Lit. 59 b. Co. Secundum formam & effectum sur sum redditionis, and therefore it is not to be likened to the Case of Feoffees at the Common Law. And altho' the Lord grants the Land over by Copy to another, all that is without Warrant, for notwithstanding that, the Lord may make Admittance according to the Surrender, and that shall be good, and he who is (c) Antea 27. b. Moor 358. Cr. admitted shall be (c) in by him who made the Surrender, as it was resolved in Taverner's Case next before: And there-Eliz. 361. Co. Lit. 59. b. Bridgm. 51. fore it was agreed per totam Curiam, if the Lord after fuch Surrender grants the Land to Ceftuy que use and a Stranger, I Rolls 503. Postca 29. b. the whole thall enure to the Ceffuy que use; or if he admits Cr. Car. 205. Cestuy que use upon Condition, the (d) Condition is void, for after Admittance he is in by him who made the Surrender. As if a Man devises a Term to J. S. and the Executors agree and affent that J. S. and J. N. shall have the Term, or that J. S. shall have it upon Condition, in these Cases J. S. shall have the Term solely and absolutely, for atter the Assent of the Executors he is in by the Devise. And it was faid, that it has been lately adjudged in Bunting's Caje, That where a Copyholder furrenders to the Ld. to the Useof (e) Poster 29-2.b. another for Life, (e) and the Lord admits him to hold to him and his Heirs, that yet he who is so admitted, has but an Estate for Life, for he is in after the Admittance by Force of the Surrender. As to the second Objection it was an-(f) to Co.140.a. swered and resolved, That without special Custom, for (f) 6 Co. 67.2. Consultation loci est semper observanda, or other special Matter which is in this Case, the Admittance shall enure (g) ter which is in this Cafe, the Admittance shall enure (8)

only to the Husband for the Reasons aforesaid: wherefore

Judgment was given against the Plaintiff.

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THE Case as it was found by special Verdict was to 18.
this Effect; J. Bunting the Pl's. Father, and Agnes A- M. 27 & 28 EL. ding shal contracted Matrimony between them per verba de v. Lepingwel. presenti tempore; and afterwards I Decemb' anno Dom' 1555. Moor 169, 170, the faid Agnes took to Husband Thomas Twede, and afterwards 9 Julii, 1555, John Bunting libelled against the said Agnes upon the said Contract in the Court of Audience, upon the Proceeding in which Libel, Decretum fuit quod prad Agnes subiret matrimonium cum prafato Johanne Bunting, & insuper pronunciatum, decretum & declaratum fuit dictum matrimonium fore nullum, Oc. And further it was adjudged, that the said John and Agnes should entermarry, which they did, and had Issue the Plaintist, the said T. Twede then living, and afterwards John Bunting died; and it was further found, that one Richard Bunting Father of the faid John was a Copyholder in Fee of the Land in which, Oc. held of the Manor of Goldingtons in Ganiscoln in Esfex, and out of Court according to the Custom of the Manor furrender'd by the Hands of the customary Tenants to the Lord of the Manor to the Use of Margaret his Wife and Robert his younger Son, and died, after whose Death the faid Surrender was presented according to the Custom, and thereupon the Lord of the Manor gave Admittance, and granted Seisin of the Land to Margaret and Robert, and to the Heirs of Robert; and Margaret died, and Robert survived, and surrender'd the Land to the Use of Emme his Wife, and died, Emme was admitted, Charles Bunting as Cousin and Heir of the said Rich. Bunting, S. Son and Heir of John, Son and Heir of the said Richard entred upon Emme, and the Def. as her Servant, and by her Command re-enter'd, upon which Re-entry the Pl. brought the Action: And in this Case 5 Points were adjudg'd. 1. That altho' Twede then being de facto the Husband of the said Agnes was not party to the said Suit, nor to the Sentence in the Spiritual Court which dissolved the Marriage betwixt him and the faid Agnes, but the faid Agnes (a) only; yet (a) Moor 169. the Sentence against the Wife only being but declaratory, was good, and shou'd bind the Husband de facto, and for as much as the Conusance of the Right of (b) Marriage be-(b) Cart. 233. longs to the Ecclefiaffical Court, and the same Court has given Sentence in this Case, the Judges of our Law ought (altho' it be against the Reason of our Law) to give Faith (c) 2 Ventr. 43. and (c) Credit to their Proceedings and Sentences, and to Cawdrie's Case. think that their Proceedings are consonant to the Law of holy Cawly 31.7 Co. think that their Proceedings are confonant to the Law of holy 42. b. Church, for (d) cuilibet in sua arte perito est credendum, and so (d) 5 Co. 7.2. have the Judges of our Law always done, as appears in Cawly 31.

(e) 34 H. 6. 14. b. 11 H. 7. 9. a. b. 8 Ass. pl. So that it 7 Co. 19.2.

(c) Calvin's Case. was refolv'd, that the Pl. was (f) legitimate, and no Bastard. Co. Lit. 125. a.

2. When R. Bunting Copyholder surrender'd into the Hands (e) 7 Co. 43. b.

2. When R. Bunting Copyholder surrender'd into the Hands (f) Moor 169.

of the Ld. to the Use of the said Marg. and Rob. without Li-171,

Copyhold Cafes. PART IV. (6) Co.Lie 59.b. mitation of any (e) Estate, it was resolved, that they had but an Estate for Lives, for as well Estates as Descents shall be directed by the Rules of the Law, as necessary

Consequents upon the Custom, unless there is a special Cu. ftom (which is always to be observ'd) within the Manor; as these Words, sibi & suis, or sibi & assignatis, or such like may by Custom create an Estate of Inheritance. And it was observed that the Estates in these Cases limited upon Surrenders, are always annexed to Estate; of him to whose Use the Surrender is made, and always the Surrender to the

(6) Co. Lit. 59.b. Lord is general (b) without Limitation of any Estate.

3. It was resolved, That when the Lord made Admittance and deliver'd Seisin to Margaret and Robert, and to (c) Antea 28. b. Co. Lit. 59. b. 8 Co. 135. b. the Heirs of Robert, it was only an (c) Admittance to them for the Term of their Lives, the Reversion over to Cr. Eliz. 392. Rich. Bunting who made the Surrender, because the Lord is but an Instrument (d) in this Case, and when he has ad. Cr. Car. 205. 1 Rolls 504. (d) Cr. El. 361. Cr. Car. 205. mitted according to the Effect of the Surrender, nothing remains in him but the Reversion of the Estate in him who Antea 27. b. made the Surrender to dispose of as he pleases according Bridgman 51. 2 Rolls 503. 8 Co. 63. b. to the Custom of the Manor; and those who were admirted for their Lives, were in (e) by him who made the Sur-Moor 112. render, which can't be if the Reversion shall be in the Lord, 13 Co. 3. 2 Sidert. 61. (e) Antea 27. b. 28. b. Moor 358. Cr. Eliz. 361. 4. Altho' he who is admitted is in by him who made the Surrender, yet it was resolved that a Man may surren-Co. Lit. 59. b. Bridgm. 51. 1 Rolls 503. Cr.

der (as Robert Bunting did in this Case) to the Use of his Wife, because the Husband doth not make it immediately to the Wife but by two Means, f. by Surrender of the Hulband to the Lord to the Use of the Wife, and by Admittance of the Lord to the Wife according to the Surrender.

5. When Rich. Bunting made the Surrender out of Court, (1) Cr. Jac. 403. (f) and died before it was presented in Court, yet the Surrender being presented after his Death, according to the Custom is good, but if it had not been presented according to the Custom, then the Surrender became of no Force or Effect. So if the (g) Tenants by whose Hands the Surrender was made die, yet if it is upon good Proof presented, it is good enough. So in the Case of (h) Kite and Quinton before, where he to whose Use the Surrender was made died before Admittance, yet his Heirs shall be admitted. And this last Point was resolved without any Difficulty or

(6) Rolls 304 Scruple, and that was the true Case of Bunting mentioned in (i) Westwick's Case next before, and well agrees with the Antea 25. 2. (i) Antea 28. b. Reason of the same Case.

19. P. 36. El. Down v. Hopkins in B. R. (\*) Cr. Eliz.

Car. 205.

1 Rolls 100, 501. Co. Lit. 59. b.

Bulftr. 215. Roll. Rep. 415.

Bridgman 51. Lane 99. 2 Syd. 37, 38, 61, 624 Roils 504

Sand. 422. Mod. Rep. 102

g) 3 Bulft, 215. Bridgman 51.

HE(k) Case was, within the Manor of Chaldwarton in the County of South. there were divers customary Lands Time whereof, &c. had been granted by Copy of Court Roll of the same Manor, for one, two, or three Lives;

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of which Manor Sir George Pawlet and Elizabeth his Wife. as in the Right of his Wife were feised, Oc. and at a Court of the faid Manor, 4 & 5 Phil. & Mar. granted the Place where, Oc. being Parcel of the customary Tenements, Oc. to the said Down durante viduitate sua; and if this Grant was according to the Custom of the Manor or not was the Question: And it was adjudg'd that this Grant was within the Custom, for every Grant (a) durante viduitate is an Estate (a) Lit. Sea. for Life, as appears by Lit. 90. 6 37 H.6. 27. 14 H. 8. 13. a. 380. Co Lit. 6c. but every Grant for Life is not durante viduitate, for 37 H. 6. 26. a general Estate for Life is larger and more beneficial than Br. Waste 102. durante viduitate. In Mich. 2 & 3 Eliz. Dyer 192. Issue Br. general was taken, whether the Custom of a Manor was, that the 3. 2. Dyer 305. Wife of every Copyholder shou'd have the Land after the pl. 59. Moor 31. Death of her Husband for the Term of her Life; and it was given in Evidence that the Custom was, that the should have (b) durante viduitate sua, and it was adjudg'd, that this Evi-(b) Dyer 192.pl. dence did not maintain the Custom alledged before, be-Doct. pla. 200, cause it is a less Estate than Custom pro termino vita was, (c) 4 Co. 23. 2. and the Estate and Substance of Issues joined betwixt the 1 Rols 511.

Parties are to be proved precisely: But in the principal Co. Lit. 52. b.

Cr. Eliz. 323. Case it was resolv'd, that the Custom is well pursued, be- 373. Godb. 20. cause the Estate granted was less (c) than the Custom war- 1 Rolls Rep. 48. ranted; And that agrees with the Resolution before of the 1 Leon 56. Salk. fecond Point in Gravenor's Case. And in this Case it was (d) Co. Lit. 61.6. faid, that the Lord of a Manor may by (d) Word retain Kelw. 158. b. one to be Steward of his Manor, and to hold the Courts 527 thereof, as well as a (e) Baily may be, and that by Word, 228. Godb. 145. and this Retainer shall serve till he is discharged, and there-Infra 30. 2. with agrees 8 Eliz. Dyer 248. (e) Kelw. 174.

I N this Case 3 Points were resolved. 1. That the Ld. of a Manor may retain one to be Steward of his Manor, Tr. 41 Eliz.
and to keep his Courts by (g) Word, and this Retainer (in B. R. on shall endure till he is discharged thereof, and this agrees pecial Verdice Cr. Eliz. 699.

with the Opinion in Case next before.

th the Opinion in Case next before.

2. That where a Copyholder of the Queen's Manor was pl. 79. Kelw.

2. That where a Copyholder of the Queen's Manor was pl. 79. Kelw.

2. That where a Copyholder of the Queen's Manor was pl. 79. Kelw. attainted of Felony, by which his Copyhold escheated, the 61. b. Cr. Ja Queen's Steward of the same Manor might (h) grant it 0-526, 527. Godle. yer ex officio without any special Warrant; for the Custom of 227 the Manor warrants the Steward of the Manor for the Time (h) Cr. El. 699. being to grant it, and the Custom binds the Q. her Heirs and Successors: But altho' he may by the Law do it, yet his Duty is before he makes any Grant to inform the Lord Treasurer of England, Chancellor and Barons of the Exchequer or fome of them, for his better Direction, and for the Queen's greater Profit in those Cases,

3. It was refolv'd, That the K's Auditor (i) or Receiver has (i) Cr. El. 699:

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not Power to retain a Steward to hold the Queen's Courts: But he ought (if fuch voluntary Grants by him made upon Escheats or Forseitures shall be good) to have Letters Pa. tents of the Office of the Stewardship of the same Manor.

Lady Holcroft's A Jac. 526, 527. 1 Ro. 500. Co. Lit. 59. 2. (c) Co. Lit. 61.b.

ND it was faid in this Case, That it was adjudged in C. B. in the Lady Julian Holcroft's Case, that where one was generally retained by the Lord of a Manor by (a) Word to be Steward of his Manor, and to keep his Courts. Cr. Jac. 526, that such Steward might take (b) Surrenders of customary 527. I Leon: 227, Tenements out of the Court; for till such Steward is (c) discourt 248. pl. 79. charged, he is Steward of the Manor, as well by the Reford. 142. Cro. tainer by Word, as if he had a Grant thereof by Deed.

(d) Moor 410, 411. Cr. Eliz. 426. 1 Rolls 600, 601. (e) 2 Siderf.

THE Case was, That the Pl. late the Wife of a Copy. holder in Fee of a Manor in which by special Custom Women were to be endowed, recovered Dower by Plaint Trin. 37 Eliz. in the Court of the Manor, and because her Husband died shaw & Thomp- seised, she recovered 50 l. Damages for the Profits from the Death of her Husband: The Woman brought an Action of Debt for this 50 1. in B. R. And in this Case, I. It was resolved. That the Wife shou'd not have Dower (e) of a 139. 2 Bulft.337. Copyhold, unless it be by special Custom. 2. When a Wife Hob. 215. . is to be endowed by Custom of a Copyhold, then the shall Antea 22. 2. Co. is to be endowed by Custom of a Copyhold, then she shall Lir. 33. 2. have all Incidents to Dower, and Co. Lir. 32. b. have all Incidents to Dower, and Co. Lir. 32. b. have all Incidents to Dower, and the Statute of (f) Merton, Co. Lir. 32. b. have all Incidents to Dower, and the Statute of (f) Merton, Co. Lir. 32. b. have all Incidents to Dower, and the Statute of (f) Merton, Co. Lir. 32. b. have all Incidents to Dower, and the Statute of (f) Merton, Co. Lir. 32. b. have all Incidents to Dower, and the Statute of (f) Merton, Co. Lir. 32. b. have all Incidents to Dower, and the Statute of (f) Merton, Co. Lir. 32. b. have all Incidents to Dower, and the Statute of (f) Merton, Co. Lir. 32. b. have all Incidents to Dower, and therefore in such Case Cr. Car. 43. cap. 1. de viaus, oc. and the control and altho' they exceed a link. 80. Moor Recovery of Damages was lawful; and altho' they exceed (i) Cr. El. 426. (g) 40 s. yet they were well warranted by Law: which two Noy 129.
(b) Antea 12. 2. Points well agree with the Resolution before in (i) Brown (i) Antea 12. b. and Rivet's Case. 3. It was resolved, That no Action of Debt lies for the said Damages at Common Law, for upon fuch Judgment no Writ of Error (k) or false Judgment lies, but the (1) Remedy is in the Court of the Manor, or in the Chancery, which is also consonant to the Resolu-tion in Brown's Cuse. And Fenner Justice said, That he had feen a Record of 36 H. 8. where the Lord upon a Pe-77. Co. Lit. 60.b. tition to him, had for certain Errors in the Proceedings Vide 13 R. 2. reversed such Judgment given in his own Court; And upBrown's Case, on that, the Defendant shall have Audita querela to be reflored to the Damages recovered against him.

(k) Moor 410, 411. I Rolls 600, (1) 1Rolls 600, 601. 13 Rich. 2 Faux Judgment 7. Antea & 14 H. 4. Vide 7 E. 4. 29.

13 Co. 69.

P. 37 El. Hoe & given in C. B. where the Case was such; Henry fer-Taylor in error ningham Esq; was Lord of the Manor of Mutford in the (m) Cr. El. 413. County of Suff. and Taylor claimed the Underwood of a Moor 355. Godb. 174. great Wood called Mutford-Wood, Parcel of the same Ma-THE faid Writ of Error was brought upon a Judgment nor to be demised, and demisable from Time whereof, &c. by Copy of Court Roll of the same Manor, Oc. to be cut yearly

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by four (a) or five Acres at the most, and conveyed to (a) Cr. Eliz. himself a Grant of the said Underwood by Copy, &c. 413. Moor 355. according to the Custom; and for Trespass done in the Underwood, he brought the Action of Trespass against Hoe. And it was adjudged in C. B. that Underwood growing upon Parcel of the Manor might by Custom be granted by Copy of Court Roll of the same Manor; And that Judgment was affirmed in B. R. for it was there faid, That the faid (b) Underwood might be granted by Copy, because it (b) Jenk. Cent. grew upon Parcel of the Manor; also it is a Thing of Per-Moor 355. Co. petuity to which Custom may extend, for after every felling, Lit. 58. b. the Underwood grows again, ex stirpitibus. So it was refolved, that (c) Herbage, or any (d) Profit of any Parcel (c) Co. Lic. of the Manor, might by Custom be granted by Copy: And 498. Jenk. Cent. it was faid that a (e) Fair appendant to the Manor of <sup>274</sup>. Cent. Crokenhorn in the County of Somerset is granted by Copy of <sup>274</sup>. the same Manor. And that well explaineth the Resolution. Cent. <sup>(e)</sup> Ante2 <sup>24</sup>. b. tion in Murrel's Case before, concerning the first of the Cr. El. <sup>274</sup>. tion in Murrel's Case before, concerning the first of the Cr. El. <sup>274</sup>. Pillars upon which every Copyhold stands, s. Custom. The Moor <sup>355</sup>. Co. Co. Lit. <sup>58</sup>. b. 10 Case of these.

IT was adjudg'd that if a Copyhlod Estate is forfeited to the Lord, or escheats, or otherwise comes to the Lord's Hands, M. 18 & 19 El. if the Lord makes a Lease for Years, or for Life, or other Frenche's Case. Estate by Deed, or without Deed, that this Land can never after be (f) regranted by Copy, for the Custom is de-(f) 1 Rolls 498.

stroyed, because during such Estates, the Land was not 2 Syders. 35, 140, demised nor demisable by Copy of Court Roll: So if the 449. Dyer 114.

Lord makes a Feoffment in Fee thereof upon Condition pl. 61. Cr. Car-Lord makes a Feoffment in Fee thereof upon Condition, 521. and afterwards enters for the Condition broke, yet it can never be regranted by Copy; But if the Lord keeps the Land in his Hands for a long Time, or lets it at Will, he, his Heirs or Assigns may well regrant it at his Pleasure. So if the Interruption is wrongful, as if the Lord is diffeised, and the Disseisor dies seised, or if the Land is recovered against the Lord by false Verdiet, or erroneous Judgment, in these Cases, till the Land is recovered, or the Judgment reversed by the Lord of the Manor, the Land was not demised, or demisable, and yet after the Land is recontinued, it is grantable again by Copy; for Non valet (g) impedimentum quod de jure non fortitur effectum, & quod (g) Co. Liti contra legem fit pro infecto habetur : But if the Land fo for- 381. b. feited, or escheated before any new Grant made is extended upon a Statute, or Recognisance acknowledged by the Lord, or if the Wife of the Lord in a Writ of Dower has this Land affigned, to her, altho' these Impediments are by (6) 2 Co. 17. 2. Acts in Law, yet in as much as the Interruptions are lawful, Godb. 101. Sav. the Lands can never after be granted by Copy. If a Copyholder 70, 71. 1 Brown. accepts (b) a Lease for Years of the Lord of his Copyhold, the 32. 1 Anders. 191. 1 Leon. 170.

Copyhold .

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(a) Sav. 70, 71. 3 Bulft. 81. Godb. 34. Cr. Eliz. 7. Cr. Jac. 84. Godb. 153. Noy 12. Moor 185. 2 Syderf. 139. Cr. Car. 521. (b) Moor 185. 2 Co. 17. 2.

Copyhold is destroyed for ever, and can never be granted again: If the Copyholder (a) takes a Lease for Years of the Manor, by that his Copyhold has not Continuance, as it was adjudged Pasch. 17 Eliz. in (b) Hide's Case; but in the same Case it was resolved, That such Lessee might regrant the Copyhold again to whom he wou'd, for the Land was always demised or demisable; And if a Copyhold is surrender'd to the Lessor of the Manor, or is forfeited to him, he or his Executors or Assigns may well regrant it: And if a Copyhold escheats to the Lord, and he aliens the Manor by Fine, Feossment, or otherwise, his Alienee may regrant the Land by Copy, for it was always demised or demisable: And by these Resolutions you will better understand the general Learning in Murrel's Case before, concerning the second of the Pillars of a Copyhold, s. (c) demised and demisable from Time whereof, &c.

(c) 3 Syderf. 142. Go. Lit. 18. b.

M. 29 & 30 El. Foitton& Crach roote in B. R.

(3) 6 Co. 60. b. Hob. 86. Cr. Jac. 665. Cr. Eliz. 353. (b) Doct. pla. 81. Moor 461. Hob. 86. Cr. Jac. 665. Cr. Eliz. 353, 390. 6 Co. 60. b.

(c) Doct. pla. 81. Cr. Eliz. 390. Moor 461. 6 Co. 60. b. Cr. Jac. 665.

Kclw. 77- 2.

HE Case was, that a Copyholder of certain Tenements called Collins Parcel of the Manor, &c. in Pleading al. ledged Quod infra Maner' prad' talis habetur, necnon a toto tempore cujus contrarii memoria hominum non existit, habebatur consuetudo, (viz.) quod quilibet tenentes prad' tenementorum vocat' Collins, had used to have Common in such a Place Parcel of the faid Manor; And if the Custom might be alledged within the Manor and applied but to one fingle Copyhold was demurr'd in Law. And it was adjudged, that fuch (a) Custom, as well for the Form as for the Matter of it, was good: For first, the Copyholder in his own Name can't (b) prescribe, for the Weakness and Baseness of his Estate; but if he will prescribe, he ought to prescribe in the Name of the Lord of the Manor, s. to fay, That the Lord of the Manor and all his Ancestors, and all those whose Estate he has, have had Common in fuch a Place for him and his Tenants at Will, &c. as appears in 22 H. 6. 51. a. Oc. and that shall ferve when the Copyholder claims Common or other Profit in the Soil of a Stranger: But when the Copyholder claims Common or other Profit in the Lord's Soil, then he can't (c) prescribe in the Name of the Lord; For the Lord can't pre-fcribe to have Common or other Profit in his own Soil; but then the Copyholder, forasmuch as he can't prescribe, neither in his own Name, nor in the Lord's Name, he must of Necessity alledge, that within the Manor is such a Custom as in the Case at Bar: And as when the Copyholder claims Common or other Profit in the Soil of the Lord, he ought to claim it by Custom of the Manor; so when he claims it in the Land of ano. which is not Parcel of the Manor, he can't claim it by the Custom of the Manor, for the Custom is, Quod infra maner' talis habetur, O'c. consuctudo, and theref, he can't apply

Hob. 186.

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apply it, or by Force thereof claim any Thing out of the Manor, as was done 21 Eliz. (a) Dyer, and therefore there (c) Dyer 363. pl. it was clearly mispleaded; but in such Case he ought to 27. 6 Co. 61. 2. prescribe in the Name of the Lord.

Nota, a good (b) Difference between Prescription which (6) Hob. 286 is Personal, and is always made in the Name of a Person 6 Co. 60. b. ce certain and his Ancestors, or those whose Estate he has, Lit. 113. b. and Custom which is local and alledged in no Person, but that within a Manor, Oc. is fuch Custom, and that ferves for them who can't prescribe in their own Name, nor in the Name of any Person certain, as Inhabitants of a Town. Oc. as appears in 15 E. 4. 29. 40 Aff. 41. 2 Mar. Br. Prescription 100. 6 E. 6. Dyer 71. Also Allegation of a Cufrom shall ferve when it is referred to a Thing insensible, f. that all fuch Lands &c. are devisable, or the like. Vide 40 All. 41. Oc. And because in the Case at Bar the Custom might have a lawful Beginning, f. That one Copyholder only should have Common, or Estovers, or other Profit in the Land of the Lord, and that in many Manors, some Copyholders had Common in one Wast of the Manor, and others in another feverally, so that the Custom cannot be applied to all; And because all the other Copyholders may be determined or extinct; for these Reasons 'twas adjudg'd that the Custom was well alledged in the Case at Bar, as well for the Manner as for the Matter; And fuch Custom for one Copyholder to have Common of Estovers in the Lord's Wood, Parcel of the Manor whereof the Copyhold was held, was adjudged to be good. Pajch. 10 Eliz. as it was faid in this Case. Vide 21 E. 3. 34. 1 Mar. Dyer 114. 5E.6. Dyer 70, 71. And because it has been often said before. That the Custom of the Manor is the Soul and Life of the Copyholders, it was necessary in my Opinion to add this Case, to shew how he shall alledge the Custom, and when and how he shall prescribe.

Pasch.

## Pasch. 26 Regina ELIZABETHE.

### MITTON's Case.

UEEN Elizabeth by her Letters Patents under the Great Seal constituted and granted the Office of Clerk of the County Court, or Shire-Clerk of the County of Somerset to Mitton, with all Fees, &c. for Term of his Life: And afterw. the Q. constituted Arthur Hopton, Esq; Sheriff of the same County, who interrupted Mitton, claiming that which was mention'd to be granted to Mitton to be incident to his Office of Sheriff, and thereupon he appointed a Clerk himself of the County Court: Mitton thereupon complained to the Lords of the Council, who referred the Confideration of the Validity of the Grant of the faid Office to the two C. Justices Wray & Anderson, before whom the Matter was often debated; And Mitton's Council argued, that the Grant of the said Office was good in Law for divers Reasons. 1. Because the County Court is the Q's. Court, and in it as to all Actions and Proceedings by Jufficies, or other Writ, or by Plaint, the Suitors are Judges, and the Sheriff but Mini-ster, and as to Utlagaries, the (a) Coroners are Judges; and in Proof thereof 6 E. 4. 3. b. 7 E. 4. 23. a. 39 H. 6. 5. a. 26 Aff. 45. were cited, and therefore it was concluded, that the Queen might in her own Court appoint a County Clerk to enter the Judgments and Proceedings in the fame Court. 2. That Arthur Hopton (who was made Sheriff after the Patent) could not avoid it, and principally for as much as the Sheriff has his Office but at the Will of the Queen, which Office she might at her Pleasure determine in Part or in all, and the Queen has granted the faid Office of Shire Clerk to Mitton for Term of his Life, and therefore the faid Sheriff should not avoid it. 3. Mitton's Council shewed 2 or 3 (b) Precedents, by which it appear'd that

(a) 9 Co. 119.2. Co. Lit. 288. b. Cr. El. 50.

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fuch Offices had been granted in the Time of King H. & ad after; and that was the Substance of all which was hid for the Maintenacce of all the faid Letters Patents: And after many Arguments (because the Case concern'd the Validity of the Queen's Grant) the two Chief Justices had Conference with the other Justices, and upon Confideration had of the Letters Patents, and of all that was faid in Maintenance of them, it was refolv'd by all the Justices nullo contradicente aut reluctante, That the faid Letters Patents were void in Law; and the Reasons and Causes of their Resolution were. 1. That the Office of (a) a Sheriff is an (a) Davisses ancient Office which has had Continuance long before the Pref. 1 Rep. Conquest, and is an Office of great Trust and Authority; p. 45. for the King commits to him \* custodiam Comitatus, the Cu- o Co. 491 Co. sody and Guard of the County; And when the King Lin. 168. 21 Dalta appoints a Sheriff durante bene placito, altho he may deter- sher. 5. 6. mine his Office (b) at his Pleasure, yet he can't determine it (b) kelo. 47 in (c) Part, as in one Town, or Hundred, or any other pl. 3. Dale. Part, nor abridge the Sheriff of any Thing incident, or appurtenant to his Office, for the Office is intire, and fo ought to continue in its Intierty without any Fraction or Diminution, unless it be by Act of Parliament, or that the King makes some Town Oc. a County of itself, and appoints a Sheriff and all Things incident to a Sheriff within the fame Town; but can't determine the Office of Sheriff, or any Part without making a new Sheriff, f. for the Execution and Administration of Justice. And it was refolv'd, that the County Court, and the entring of all the Proceedings in it are incident to the Office of (d) Sheriff, and therefore (d) 2 Rolls 745 can't by Letters Patents be divided from it: And altho 3 Ventr. 269. the faid Grant has been made to Mitton when the Office of 2 Syd-1400 Sheriff was void, yet it had been void, and when the Queen has appointed a Sheriff, he shall avoid it. And so it was said it was adjudged in Scrogge's Case in the Beginning of the Reign of Queen Elizabeth where the Case was; That tem- vide this Case pore vacationis of the Office of Chief Justice of the Common Dyer's Eliz-1750 Pleas, Queen Mary granted (e) the Office of the Exigenter (e) 2 Ventr. 269.
of London to Scrogges, and it was held void, because it was 1 And. 152, 1530.
of London to Scrogges, and it was held void, because it was 8cc. pl. 25, 260 incident to the Office of Chief Justice of the Common Pleas, Noy 51. which the Queen could not have, and the next C. J. shall avoid it. And as to the first Objection it was answer'd, That in all Writs directed to Sheriffs concerning the County Court, the King faith, In Comitate two; And in all Returns of Exigents made by him he faith, ad Comitatum tentum, Gc. And the Stile of the Court proves it also: And by the Statute of 33 H. 8. cap. 13. it is provided by the K. the Lords Spiritual and Temporal, and the Commons in Parl. elembled, That the Sheriff of the County of Denbigh, shall keep

bis Shire Court at the Shire Hall in the faid County, Oc. by which (as by many other Parliaments) it appears, that the County or Shire Court is the Court of the Sheriff, and altho' the Suitors be there Judges in some Cases, yet non fequitur that the Court doth not belong to the Sheriff, for in a Court Baron (a) the Suitors are Judges, and yet the Court belongs to the Lord of the Manor. As to the fe-SCo. 60. b. Court is incident to the Office of the Manor. As to the fe-Godb. 49. Court is incident to the Office of Sheriff, as the (b) Sheriffs a Rolls 543. Cr. El. 792. Cr. Jac. turn is. As to 3 Objection it was answered, Quod (c) 582. 4 Inst. 266, judicandum est legibus, non exemplis. But for a general An. 268. 7 E. 4-23-2 fwer to all the said Objections, and all others which may a Mod. Rep. 171. be made, it was said, that great Inconvenience would ensue 12 H.7. 16, 17.

Br. Judges 18. to Sheriffs, who are great and ancient Officers and Minito Sheriffs, who are great and ancient Officers and Ministers of Justice, if such Grants shou'd be of Validity, for by such, as well the entring of all Proceedings in the lame (b) Rolls 542. Court, as the Custody of the Entries and Rolls thereof do (c) Cro. Arg. belong to the Office of Sheriff, and that is well proved 130. Hard: 122. by the Writ of (d) False Judgment, of an erroneous Judg-Ca) F. N. B. 18.b. ment given in the County Court, the Form of which Dyer 164. pl. 58. ment given in the County Court, the Form of which Writes is such: Jacobus, Gr. Vic' S. salutem, s. A. secerit by fuch, as well the entring of all Proceedings in the fame Writs is such; Jacobus, &c. Vic' S. Salutem, f. A. fecerit &c. tunc in pleno Com' tuo recordari facias loquelam, which is, in eodem Comitatu per breve nostrum de recto, inter A. petentem, Oc. unde idem A. queritur falsum siti factum suisse judicium in eodem Com' & record' illud habeas coram Justiciariis nostris apud Westm' &c. Jub sigillo 140, & per quatuor legales milites ejusdem Com' ex illis qui Recordo illo interfuer, Oc. And this also appears by the Precept of a Tolt which the Sheriff makes to remove a Plea in any Court Baron before him in his County, the Words of the Precept are, Et loquelam, &c. tollas, & sumoneas, &c. pradict. J. quod st ad Comitatum meum S. scil. die Luna, &c. tenend'. And in all Writs to remove any Plea out of the County into the Common Pleas, the King calls the County Court the (e) Sheriff's Court; And if the Sheriffs do not certify by Force of fuch Writs the Record, then at last shall issue Process of Contempt: And if the Record be imbezilled, the Sheriff shall answer for it, and therefore it wou'd be full of Danger and Damage to Sheriffs, if others shou'd be appointed to keep the Entries and Rolls of the County Court, and (1) Cawly 184. yet the Sheriff (f) should answer for them as immediate Of-(8) 6 H. 7. 2 b. ficer to the Court, and therefore the Sheriff shall appoint Clerks under him in his Country Court, for whom he shall answer at his Peril; the same Law of the (g) Sherist's Turn: And Law and Reafon require, that the Sheriff who is a publick Officer and Minister of Justice, and who has an Office of fuch Eminency, Confidence, Peril and Charge, ought to have all Rights appertaining to his Office, and ought to be favoured in Law bef. any private Perf. for his fin-

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Company of the

gular Benefit and Avail. Mich. 30 & 40 Eliz. at Serjeant's Inn in Fleetstreet it was refolv'd by Popham and Anderson Chief Justices, and all the Justices of England, That the Custody of the (a) Goals of the Counties, of Right belongs (a) Mich. 30 & and is annexed and incident by the Law to the Office of 40 Eliz. Case of Gaolers. 2 Roll. Sheriffs, and that well appears by the Judgment in Parl. 75.3 Co. 44.2.

anno 14 E. 3. cap. 10. by which it is ordained and enacted, I finft. 92.

That all Goals of Counties shall be rejoined to Sheriffs, and Raym. 423, 468. the Sheriffs shall have the Custody of the same Goals, as before Time they were wont to have; and that they shall put in fuch Keepers for whom they will answer. Upon which it was refolved by all the Justices, that the Grants of the Custodies of the Goals of Counties, (now lately, either by King H. 8. or after granted to fundry Persons) were utterly void: And forafmuch as the Custody of them belongs to the Office of Sheriff, who being immediate Officer to the King's Courts shall answer for Escapes, and shall be fubject to Amercements if he has not the Body in Court upon Process directed to him, &c. it is Reason that he shall put in such Keepers of the said Goals for whom he will answer, according to the Purview of the said Act of 14 E. 3. and therefore it wou'd be against all Reason, that he shou'd answer for Escapes out of the said Goals, and that he shou'd be subject to Amercements for hor having the Bodies of Prisoners, &c. and yet another shou'd have the Keeping and Custody of the Goal: Which Resolution agrees in Reason with the said Resolution in Mitton's Case, and therefore I have added it in this Place.

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# Michaelis 26 & 27 Eliz. Regina, In the King's-Bench.

#### BOZOUN's Cafe.

Godb. 25, 26, 37. 2 Roll. 192,

HE Cafe between Fatter Plaintiff, and Bozoun and others Defendants, as it was found by special Verdier was such; A Portion of Tithes in Longham, in the County of Nonfolk, appertaining to the Rectory of Gresenhall, which was a Rectory presentable, and all the other Tithes in Bongham were Parcel of the Rectory, of Longham, which was appropriated to the late Monastery of Wendling within the fame County; of which Rectory of Longham Queen Elizabeth was seised in her Demesn as of Fee in Right of her Crown; And by her Letters Patents bearing Date 26 Januarit anno 12 Eliz. Ex gratia Speciali, certa scientia, O' mero motu granted to Nicafius Tertesworth and Bartholomew Brockesby and to their Heirs, Totam illam portionem decimarum & garbarum suarum in Longham in Com' Norf. cum omnibus aliis decimis suis quibuscunque in Longham in dicto Com' Norf. tunc vel nuper in occupatione Johannis Corbet; and further granted by the said Letters Patents, that they shou'd be of Force and Effect against the Queen, her Heirs and Successors, Non obstante male nominando, vel male recitando pred' portionem decimar' & aliorum pramissor'; Et non obstante aliquibus aliis defectis in non nominando, vel male recitando, vel non nominando alicujus tenentis five occupatoris. And it was further found by the Jurors, That the faid John Corbet never had any Tithes in Longham in his Occupation; And if all the Tithes in Longham Parcel of the said Rectory of Longham should pass by the said Letters Patents or not was the Question: In this Case & Quest, were moved; 1. Whether the last Words, f. in the Occupation of J. C. shou'd refer to the first Words, f. tot' ill' portion' decimar' & garbar' JUAT HITS

furrum in Longham in dicto Com' Norf. or only to the latter Words, J. cum omnibus aliis decimis Oc. 2. When the Queen granted totam illam portionem decimarum O garbarum in Long-ham, if the Tithes which were Parcel of the Rectory of Longham shou'd pass. 2. If the faid first Words, totam illam portionem decimarum, were so certain, that the last Words being falfe, shou'd not make the Grant, but the superfluous Words void. 4. If the Non obstance thall supply the Defect of the mistaking of the Farmer. As to the first it was refolv'd by Sir Christopher Wray Chief Justice, Sir Thomas Gawdy & totam Curiam, that the last Words refer to the whole Sentence: I. Because the Words are, totam illam portionem decimarum O' garbarum suarum O'c. fo that this Pronoun (illam) shews plainly that there ought to be Words subsequent to explain and reduce into (a) Certainty what (a) Cro. Car.
Portion by the Queen's Intent shall be granted, f. that which palm, \$3. was in the Occupation of John Corbet, and therefore this Pronoun (illam) is not fatisfied till it's come to the full End of the Sentence. 2. This Conjunction, cum omnibus aliis decimis suis, &c. couples the latter Words to the former, and makes the Words subsequent refer to the whole Sentence. 3. If the first Words wou'd convey all the Tithes of the faid Rectory, then the Addition of the Occupation of John Corbet to the subsequent Words wou'd be vain and nugatory; Et (b) maledicta expossio est que corrumpit textum. (b) 2 Co. 24. 24. As to the second Question, it was resolved, that this Word 8 Co. 36. b. (c) (portio) properly signifies a Part or Portion in gross 105, 107, 108. divided, and not Parcel of the Rectory of Longham, and 1 Roll. Rep. 24. in the Case at Bar the Queen had not any Portion of 3 Kcb. 413. Tithes in gross, but all were Parcel of the Rectory: And altho' the Queen's Grant is, Ex gratia Speciali, certa scientia, or mero motu, yet that will not extend the Queen's Grant against her Intent and Meaning expressed in her Grant, nor by any strained Construction make any Thing pass against the apt and proper Signification, or at least the com-mon and usual Intendment of the Words of her Grant, and as well the proper and apr Signification, as the usual Intendment of a Portion of Tithes, is of Tithes in gross, and not Parcel of the Restory, and therefore no Tithes. Parcel of the Restory in the Case at Bar shall pass. And as to 3 Point, when the Queen granted totam illam portionem, Oc. adiunc vel nuper in occupatione Johannis Corbet (d) Lit. Rep. 62. and Corbet had no Tithes there, it was resolved, that no- 193. Cro. Jac. thing (d) past thereby: For admitting that this Word (portio) 43, 680. Lane shall be taken for a Part, then the Effect of the Grant is, total 60. Mo. 755.

ill partem decimar nostr' in occupatione J. Corbet, and in Truth 1 Keb.413. Harda he never had any Part, without Question nothing shall pass for 118. Godb. 423. the Incertainty, if it was in the Case of a common Person 2 Co. 33.4.

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vaugh. 334. 2 Roll. Rep. 17, 215. Hard. 110,

(6) Hob. 229. 2 Roll. Rep. 359.

131. 2. 10 H. 4. 6.2.27 H. 6. 1. b. 29 H. 6. 39. 2. 1 Roll. 325. Br. Protection 8. Fitz. Effoign 85. 43 Aff. 21. er Thorp.

(e) Cro. Car. 198. Hob. 229 (f) 2 Roll. 191.

Mariano. and at a

a fortiori in the Queen's Cafe. As to the last Point, thefe two Differences were taken and refolv'd by the Court, f. when a Clause of Non obstante shall make the Queen's Grant good, when not. 1. When the Queen by the Com-(a) Dav. 75, 76. mon Law can't in any Manner make a Grant, there a (a) Non obstante of the Common Law will not against the Reason of the Common Law make the Grant good; but when the Queen may lawfully by the Common Law make the Grant, but the Common Law requires that she shou'd be so instructed, that she be not deceived, there a (b) Non obstante supplying it, stands with the Reason of the Common Law, and thall make the Grant good. And therefore if the King grants (c) a Protection in a Quare Impedit, or Affife, with Non obstante of any Law to the contrary, this Grant is void; for by the Common Law Protection doth not lie in either of those Cases, for the Loss which may happen to the Plaintiff, by fuch great Delay, and therefore the Non obstante can't avail, when by the Common Law the King can't grant it for the Reason aforesaid, as it is ruled in 39 H. 6. 39. a. But when the King makes a Leafe for Life, or for Years, he has the Reversion in him which he may lawfully grant; But the Law requires that the King in this Case be not deceived in his Estate, s. to grant the Possession of the Land, where he has but the Reversion: (d) 2 ROH, 190. And therefore when he (d) grants the Land, notwithstanding (e) that it be in Lease for Life, or Years, of Record or otherwise, or if he grants the Land, (f) and further grants the Reversion of it dependant or expectant upon any Estate for Life or for Years, in both these Cases the Grant is good; First, because it stands with the Reason of the Common Law, f. that the King be not deceived in his Grant. 2: In some Case it may be doubtful whether the Lease in Possession be good or not; and if the King recites it, and grants the Reversion, and afterwards it shou'd be determined by Judgment in Law that the Lease was void, the Grant will be void also, which often trenches to the Disenherison of the Patentee, which Hazard is avoided by this Resolution. 3. Admitting that all the Leases be good, if they all ought to be recited, or otherwise the Letters Parents shou'd be void: 1. It wou'd be great Danger to the Patentee if he omits or misrecites any of them: 2. Greater Danger if any Lease be not enrolled: 3. Great Charge in Search for them, and greater Charge in Recital of them, which in some Cases draws the Letters Patents to such infinite Length, that they deserve to be called Elephanti libri; and all this Danger, Charge, and Prolixity is helped by this Resolution. 2. When the Words of the Grant are not sufficient ex vi termini to pass the Thing granted, but the Grant is utterly void, there no Non obstante can make the Grant good: As in the Case at Bar, the K. grants totam illam

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the Addition of J. C. as has been said, is of the Substance of the Grant, and because J. C. never had any Portion there, the Grant is void ex vi termini, and therefore Non obsante can't make it good: But in Case of Grant of Land which is in Lease for Life, or for Years, there by the Grant of the Land the Words are sufficient ex vi termini to make the Reversion pass; but the Law requires that the Queen be not deceived in the Thing which she grants, and that is supplied by the Non obstante: And so the Case of the Reversion which was strongly urged of the Plaintist's Part, is upon evident Reason answer'd and resolv'd. Will. Daniel and Robert Snagge were of Council with the Plaintist, and Godfrey and Coke with the Desendant. And the said Letters Patents were not made good by the Statute of 18 Eliz. cap. 2. for they were Patents of (a) Concealments, and (a) 3 Co. 76. L. therefore by express Proviso excepted out of the said Act.

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## Mich. 26 & 27 ELIZABETHE, In the King's Bench.

#### TYRRINGHAM's Cafe.

13 Co. 66.

IN Trespass between Phefant Plaint iff, and Salmon Defendant, the Case was such; Tho. Tyrringham was seised of an House, 44 Acres of Land, 7 Acres of Meadow, and two Acres of Pasture in Titchmersh in the County of Northampton; to which House, Land, Meadow and Pasture, he and all those whose Estate he had, had used to have Common of Pasture for Oxen, Cows, and Heifers levant and couchant upon the House, Land, Meadow, and Pasture, as well in 30 Acres of Land in the fame Town, (whereof one John Pickering was then seised in Fee) as in 40 Acres of Land and Pasture in Titchmersh aforesaid (whereof one Boniface Pickering was then seised in Fee) as to the said House, Land, Meadow, and Pasture appertaining. And afterwards the faid Boniface Pickering being feised as aforesaid, of the said 40 Acres, purchased to him and his Heirs the faid House, 44 Acres of Land, 7 Acres of Meadow, and two Acres of Pasture, to which, or. and so seised as well of the faid 40 Acres in which, as of the faid Tenements, to which, &c, demised the House, Land, Meadow, and Paflure to which, Oc. to Phefant, who put in two Cows into the said 30 Acres to use the said Common, and the said Selmon who was Farmer of the faid John Pickering, with a little Dog, leviter & moliter drove out the said Cows, and the faid Phesant brought his Action of Trespass for chaling of his Cattel. In this Case divers Points were resolved by Wray C. J. Sir Thomas Gawdy, & totam Curiam. First, that Prescription don't make a Thing appendant, unless the Thing which shall be appendant agrees in Quality and Nature to the Thing to which it shall be appendant; as a Thing corporate can't be appendant to a Thing (a) corporate, nor a Thing incorporate to a Thing incorporate, as it is held

(4) Co. Lit. 121. b. 122. 2. 2 Roll. 230. Plowd. 85. b. 170. 2. Godb. 353.

ald in Hill & Granges's Cafe, Plow. Com. 168. a. b. But 2 Thing incorporate, as an Advowlon to a Thing corporate s to a Manor; or a Thing corporate as Land, to a Thing incorporate as an (a) Office, as it is there also held: But (a) Plowd. 162.21 every Thing incorporate can't be appendent to a Thing Co. Lit. 121. b. corporate; as Common of (b) Turbary can't be appendent Dyer 71. pl. 41to Land, but to an House, as it is held in 5 Ass. 9. for the 1 Rol. 230.
Thing which is appendent ought to agree with the Nature (b) Co. Lie.

Thing to which it is appendent and an and are been comand Quality of the Thing to which it is appendant, and mon 36.

Turfs are so be spent in an House: So 10 E. 3. 5. (c) a (c) Co. Lit. Leet can't be appendant to a Church or Chappel, for they ago. are of feveral Natures. The Beginning of Common appendant by the ancient Law was in such Manner; When a Lord (d) enfeoff'd another of Arable Land, to hold of (d): Inst. 85. him in Soccage, i. e. (e) per fervicium Soca, as every fuch Te-(e) Lit. Sed. 119. nure at the Beginning (as Littleton faith) was, the Feoffee Co. Lit. 86. b. ad manutenendum fervicium Soca, should have Common in the Lord's Wasts for his necessary Cattel which plowed and manured his Land, and that for two Reasons. 1. Because it was as it was then held, tacite implied in the Feoffment, for the Feoffee could not plough and manure his land without Cattel, and they could not be kept without Pasture, & per consequents the Feotree moud nave (as a Thing necessary and incident) Common in the Lord's Wasts and Land, and that appears, by the ancient Books in temp. E. 1. \* Common 24. & 17 E. 2. Common 23. & 2 Inst. 86.

20 E. 3. Admeasurement 8. & 18 E. 3. and by the Rehear-(f) 2 Browns. fal of the Statute of Merson, (f) cap. 4. The 2 Reason 298. 2 Inst. 86.

was for the Maintenance and Advancement of (g) Tillage, (g) 2 Inst. 86.

which is much respected and favoured in Law; So that 2 Brownson which is much respected and favoured in Law; So that 2 Brownson appendant is of common Right, and com-Pasture, O per consequens the Feosfee shou'd have (as a fuch Common appendant is of common Right, and commences by Operation of Law, and in Favour of Tillage, and (b) Co. Lit. therefore it's not necessary to (h) prescribe therein, as it is 542.4 H. 6.134 held in (i) 4 H. 6. & 22 (k) H. 6. as it wou'd be if it was 34. Br. Prescripagainst common Right; But it is only appendant to an-tion 23, 30 cient Land Arable Hide and Gain, and only for Cattel, f. Dyer 299, pl. 32.
Horses and Oxen to plow his Land, and Cows and Sheep () 4 H. 6. 12. 2.
to manure his Land, and all for the bettering and Ad-20. 2.
vancement of Tillage, and with this Resolution agree (1) (1) Br. Common 37 H. 6. 34. a. b. per tos' Cur' & 26 (m) H. 8. 4. a. as to this (m) Br. Com-latter Point, and therefore it is against the Nature of Com. mon 1. mon Appendant, to be Appendant to Meadow or Pasture: and because in the Case at Bar the Prescription was to have Common Appendant from Time whereof, Oc. to an House, Meadow, and Pasture as well as to Arable Land, by which it appears to the Court that there had been an House, Meadow and Pasture, from Time whereof, Oc. it was therefore resolved, that this Common was Appurtenant and not Appendant. But if a Man has had Common for Cattle which serve for his Plough Appendant to his Land, and perhaps of late Time an House is built upon

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Part, and some Part is imployed to Pasture, and some for

Meadow, and that for Maintenance of Tillage which was

the Original Cause of the Common, in this Case the Common remains appendant, and thall be intended, in Refpet of the continual Usage of the Common for Cattel levant and couchant upon fuch Land, at the Beginning all was A. rable, but in Pleading he ought to prescribe to have it (a) Co. Lit. 4. a appendant to Land, and altho (a) terra dicitur a terendo. quia vomere teritur, yet terra includes all, and altho' now it is Pasture or Meadow, yet it is Arable, id est, may be ploughed, altho' it is not now in Tillage and ploughed: But if he prescribes to have it appendant to an House, or Meadow, or Pasture, then it appears of his own shewing as has been faid. That there has been always an House Meadow, and Pasture, and then he can't have Common as appendant to it, but such is Common appurtenant, A Man may prescribe to have. Common appendant to his Manor, for all the Demesns shall be intended Arable, or at Jeast shall be in Construction of Law reddendo fingula fingulis appendant to such Demesns as are ancient Arable Land, and not to any Land newly plowed and improved to be Arable out of his Wasts and Moors Parcel of the Manor, and therewith agrees 5 Aff. 2. Also when a Man claims Common appendent to his Manor, no Incongruity, as in the Case at Bar appears of his own shewing. So Common may be claimed to be appendant to a Carve of Land, and yet (6) 9 Co. 124. 2. (b) a Carve of Land may contain Pasture, Meadow, and Plowd. 168. b. Wood, as it is held in 6 E. 3. 42. but no Incongruity ap-2 Brownh 297. pears there, and it shall be applied to that which agrees with the Nature and Quality of a Common appendant. 2. It was refolv'd that Common appendant may be apportioned for two Reasons: 1. Because it is of common Right, and therefore if the Commoner purchases Parcel of the Land in which, yet the Common shall be apportioned; as if the Lord purchases Parcel of the Tenancy, the Rent shall be apportioned: So if A. has Common appendant to 20 Acres of Land, and enfeoffs B. of Part of the faid 20 Acres to which, &c. this Common shall be (c) apportioned, and & shall have Common pro rata. And where it was objected, 322. 2. 2 Brownl that the Prescription fails in both the Cases; for in the first Case he never had Common in Part of the Land only, but intirely in all; and it would be now a Prejudice to the Terre-Tenant if he shou'd have Common in the 30 Acres only forall the Cattel levant and couchant upon all the Tenements to which, &c. And in the latter Case, no Common was ever appendant to Part of the Land, but intirely to the whole: Allo in Affise of Common all the Terre-Tenants ought to be named, and that can't be when the Com. himself has purchased

Part of the Land. As to these Objections, it was answer'd and

resolved, That as to the 1st, the Prescrip, ought to be special, J.

and perhaps of late Jime and Light

to prescribe to have Common in the whole 'till such a Day, and then to shew the Purchase of Part, and from that Time that he has put in his Cattel into the Residue pro rale portione; as in the Cases, when a Corporation has Liberties by Prescription, and within Time of Memory the Corporation is altered, there ought to be special Prescription: As to the second Case, J. when Part of the Land to which, &c. is aliened, there every of them may prescribe to have Common for Cattel levant and couchant upon his Land, and in none of these Cases no Prejudice accrues to the Tenant of the Land in which the Common is to be had, for he shall not be charged with more upon the Matter than he was before the Severance; and God forbid the Law should not be so, when Part of the Land to which, c. is aliened; for otherwise many Commons in England, (which God forbid) wou'd be annihilated and loft: And it was agreed, that such Common which is admeasurable, shall remain after the Severance of Part of the Land to which, &c. But in the Case at Bar, for as much as the Court resolved, That the Common was appurtent and not appendant, and so against common Right, it was adjudged, That by the said Purchase (a) all the Common was extinct; (a) Co.Lit.122.2.

For in such Case Common appurtenant can't be extinct in Hob. 25, 235.

Part, and be in esse for Part by the Act of the Parties. And winch. 45. Hut. as to the last Objection, it was answer'd and resolv'd, that 58. Cro. El. if upon the Matter the Common appendant shou'd be ap-482. 1 Jones 397. portioned, then the Terre-Tenant thou'd be only named 2 Brawnl. 298. out of the Land charged with the Residue of the Common, as in Case where a Rent-charge is apportioned in Case of Descent, the Tenant of the Land shall be only named out of which the Residue of the Rent which remains issues. And it was faid, in this Case this Word (b) (pertinens) is Latin, (6) Co. Lie. as well for appurtenant as for appendant, and therefore fub- 221. 86. a. jetta materia, and the Circumstance of the Case ought to direct the Court to judge the Common to be appendant, or appurtenant. 3. It was resolved, that (c) Unity of (c) Cro. El. 570. Possession of the whole Land to which, &c. and of the whole Poph. 166. Owen Land, in which, Oc. makes Extinguishment of Common ap- 122. 2 Brown pendant against the Opinions II E. 3. Common (d) II. 111.

14 Ass. 21. 15 Ass. 2. 20 E. 3 (e) Admeasurement 8. The (d) Antea 27. 2.

Reason of which Opinions was, because the Land to which (e) 2 Inst. 86.

the Common was already asset to the Land to which (e) 2 Inst. 86. the Common was claimed was ancient Land Hide and Gain, and for Maintenance and Advancement of Tillage, but in as much as it was against a Rule in Law, J. when a Man has as high and perdurable Estate as well in the Land as in the Rent, Common, and other Profit issuing out of the same Land, there the Rent, Common, and Profit is extinct, and therewith agrees 24. E. 3. 25. 4. In this Case Wray C. J. said, That Com-mon for Cause of Vicinage is not Common appendant, but in as much as it ought to be by Prescription, from Time whereof, &c. as Com. appendant ought, it is in this Respect resembled to Com. appendant, but Com. appurtenant and in

TYRRINGHAM'S Cafe. PART IV (a)Co.Lingand grofs, may commence either at this (a) Day by Grant, or by Prescription, And Wrey Chief Justice further faid, That in Case of Common for Cause of Vicinage the one may 6) Dy. 216. pl.4. put his Cattel in the Land of the other, but he ought to enclose (b) against t'other, for he who has such Com, can't estray into the other Land, they are excused of Trespais,

> for every fuch Trespass, when no Separation or Enclosure is between the Commons, and therefore he faid, that one may enclose against the other, for (c) cessante causa cestat

> effectus. 5. It was resolv'd without any Difficulty, that when

did him Trespass, the Defendant (d) with a little Dog

the King's Bench, between Smith Pl. and How and Redman Defts, where the Case was; That two Lords of two feveral Manors have two Wasts adjoyning (Parcels of their

Manors joyning) without Inclosure or Separation, and yet the Bounds of each Manor was well known by certain

Bounds and Marks, in which Wasts the Tenants of the

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1 Rol. 399. eftray into the other Land, they are excused of Trespals, 13 H-7.13-b.142 by Reason of the ancient Usage which the Law allows to 7 E. 4 5.2 avoid Suits which would arise if Actions should be beautiful. avoid Suits which would arise, if Actions shou'd be brought

(c) 13 Co. 18. Co. Lit. 78. b. Inft. 203. Dav. the Plaintiff's Cattel came into the Defendant's Land, and 3-2 Mo. 181. did him Trespass, the Defendant (d) with a little Defendant 15 E. 4. 3. b. (a) Poph. 162. 2 Roll 566. Smith's Case,

might chase them out, and shou'd not be compelled to difirain them Damage feafant. Nota Reader, according to the faid Opinion of Wray C. J. it was now lately adjudged in

(e) Co. Lit.

one Manor, and of the other, have reciprocally Com. for Cause of Vicinage; in that Case one may enclose (e) against the other, and thereby utterly toll the Common for Cause of Vicinage: Against which two Objections were made. 1, Because it had been used by Prescription from Time whereof, Or. the Beginning of which cannot be known, it would be hard now to break that which has had fuch Continuance; For as it is faid, Obtemperandum est consuetudini rationabili tanquam legi. 2. Perhaps the Wast of one was greater or of greater Value than the other, and probably those who have this Common in the greater, and therefore it would be now unreasonable to do it. As to these it was answered and resolved, That the Prescription imports the reciprocal Cause in itself, s. for Cause of Vicinage, and no other Cause can be imagin'd; and forasmuch as it is potius an Excuse of Trespals, when the Cattle of the Tenants of the one Manor stray into the Wast of the other Manor, than any certain Inheritance; for it was refolv'd clearly, That the Tenants of the oneManor could not put their Beafts into the Wasts of the other Manor, but they should come there only by Escape, and that the Inclosure is only to prevent the Escape of the Cattle (which is a lawful Act;) for these Reasons it was adjudge, that the one might inclose against the other. Nota Reader, it is true that (g) Agriculture and Tillageis

sti al Tantinggo, tambasqquisio.

o Coor appendent, but Compapputionant and

(g) Co. Lit.

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Charles and particular action of the solution of the second section of the section of the second section of the second section of the second section of the second section of the second section of the second section of the second section of the second section of the second section of the second section of the s

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TYRRINGHAM's Cafe. s by the com. Affent of the King, Lords Spiritual and Temporal and all the Commons in many Parliaments. 1. The Common Law prefers Arable (4) Land before all other, and (4) F. N. B. 2. C. therefore for its Dignity it ought to be named in a Pracipe Plowd. 169. 2. before Meadow, Pasture, Wood, or any other Soil; and it appears by the Statute of 4 H. 7. cap. 19. that fix (b) Incon- (b) Co.Lit. 8ch. veniences are introduc'd by Subversion or Conversion of Arable Land to Pasture, tending to two deplorable Consequences; The first Inconvenience is the Increase of (c) Idleness, the (c) Co.Lit.8(.b. Root and Caufe of all Mischiefs. 2. Depopulation and Decrease of populous Towns, and Maintenance only of two or three Herdsmen, who keep Beasts in lieu of great Numbers of frong and able Men. 3. Churches for want of Inhabitants run to Ruin and are deftroy'd. 4. The Service of God negletted. 5. Injury and Wrong done to Patrons and Curates. 6. The Defence of the Land for want of Men strong and enur'd to Labour against foreign Enemies weaken'd and impair'd. The (d) two Confequences are: 1. These Inconveni-(d) Co.Lit.85.b. ences tend to the great Displeasure of God. 2. To the Subversion of the Policy and good Government of the Land, and all this by Decay of Agriculture, which is there faid to be one of the greatest Commodities of this Realm, which one Act of Parliament as to this Purpose may as a Figure in Arithmetick, in the 3 Place stand for an Hundred: But I have observed that the most excellent Policy, and assured Means to increase and advance Agriculture, is to provide that Corn shall be of a reasonable and competent Value; for make what Statutes you please, if the Plowman has not a competent Profit for his excessive Labour and great Charge. he will not employ his Labour and Charge without a reasonable Gain to support himself and his poor Family.

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## APPEALS and INDICTMENTS, &c.

Hill.28 El.inB.R. Brooke's Cafe. 2 Leon. 83.

9 E. 4, 26 b.
Br. Indichm. 7.
Cr. Jac. 20.
(a) Cr. El. 920. 5 Co, 121. a. 21 Co. 32. a. Doct. pla. 84. Hales pl. Cor.

R Ichard Vaux brought \* Appeal of Burglary against The mas Brooke, and declar'd, that the Defendant Domin mansionalem prad' Richardi Vaux felonice & burgaliter fregt, County of Bucks, which appear'd this Term at the Bar he was convicted of the Felony and Burglary aforesaid; and the Defendant's Council mov'd in Arrest of Judgment, that the Declaration was insufficient, because the said Word burgeliter was of no Signification, but the Declaration ought to be but glariter, or burgulariter, and the Offence is called Burglary, or Burgulary, and not Burgale, for there wants an I between and a and in the latter Syllable l is inferted in lieu of r, and † Co. Lit. 123.b. burglariter (4) eft vox artis, as felonice † murdravit, (b) rapid, 287. b. (c) excambium, (d) warrantizare, (e) frankalmoign, (f) Franko. Lit. 124. a. marriage, and feveral others which can't be express'd by any Stanf. Cor. 24. 2. Periphrasis or Circumsocution; and this Word (Burglary) is Cor. 187, 207. deriv'd from these two Words Burgh and Laron, and there.

Fitz Indian. 18. fore Burglary or Property of the control of the fore Burglary or Burgulary is sufficient, but not Burgale, for that wants Sense; and many Presidents warrant burgularite to be good, but none was found to warrant burgaliter: Andupon this Exception Curia advisare vult 'till next Term; and in the mean Time the Plaintiff dy'd, and that was shewn to the Court by the Defendant's Council as Amicus Curia, and made manifest by sufficient Testimony; and thereupon the Perk. Sect. 253. glary he was once convicted at the Suit of the Farty, ...

1804. 814. b. glary he was once convicted at the Suit of the Farty, ...

1944. 6. 27. 2. never be charg'd with the same Offence at the Suit of the K.

1954. 6. 27. 2. that he might be thereof discharg'd, and upon that the Court at Co. 24. 2. that he might be thereof discharg'd, that if the Declaration had been been 384. 2. 20 Co. 24. 2. (e) Co. Lit. 94. 2, b. 10 Co. 24. 2. (f) 10 Co. 24. 2. Co. Lit. 21. b. (g) Przf. Cr. Car. 3. 2. (b) 3 Inft. 63.

r. Indictment 7 1 H. 6. 1. 2. 20 H. 7. 7. 2. Br. Rape 4. Br. Appeal 48. Fitz Cor. 1. Cr. Jac. 20. (c) Co. Litsob. ART IV. Cases of Appeals and Indiciments.

een sufficient, then being convicted at the Suit of the Party, he should not be again impeach'd at the Suit of the King but it was refolv'd, that the Declaration was insufficient, and hereupon he was difcharg'd : And in this Case upon the Eridence Wray Chief Justice said, That if a Man has a Mansion-House, and he and his whole Family upon some Accident are Part of the Night (a) out of the House, and in the (a) Mo. 660,661. mean Time one comes and breaks the House to commit Felo-Hales pl.Cor.82. ny, that this is Burglary, for tho' neither the Owner nor any Poph. 42. of his Family is in the House, yet it is domus mansionalis; and the Words of the Appeal or Indictment of Burglary are, domon mansionalem prad' R. V. fregit, &c. And according to this Opinion it was refolv'd, Hill. 38 Regine Fliz. by Potham Chief Juftice, and all the Juftices; That where a Man has (b) two Houses, and dwells sometimes in the one and some- (b) Hales pl. Cor. times in the other, and has a Family or Servants in both, and 82. Mo. 661. in the Night when his Servants are out of the House, the House is broke by Thieves, that this is Burglary for the faid Reason which Wray Chief Justice gave.

Def. pleaded not guilty, and was found guilty of Murther, the Def. pleaded not guilty, and was found guilty of (d) Ho-(c) Cr. El. 296. micide, and had his Clergy: And afterwards was indicted of (a) Hal. pl. Cor. Murther, and thereupon arraign'd at the Suit of the Queen, Cr. El. 276, 296. and he pleaded the former (e) Conviction in the Appeal at 465. Moor 407. the Suit of the Party; and it was adjudg'd a good Bar, and (e) 3 Infl. 214. thereupon he was discharg'd, for it was a good Bar by the Common Law, and restrain'd by no Statute, and the Reason is because a Man's Life shall not be (f) twice put in Jeopardy (f) Postea 43. a. for one and the same Offence.

A T the Affizes held at Sussex 25 Febr' anno 28 Eliz. before
the Justices of Assis H. Yong, W. Garland, and others sussex.
were indicted, De eo quod ipsi sexto Augusti, anno 27 vi et ar-Trin' 28 Eliginis, videlicet gladiis, &c. apud Lewes pradict exmalitiis suis pracogitatis in quendam Thomam Butcher, nuper de Lewes, &c.
Yeoman, adtunc & ibidem in pace Dei & dicta Dom' Regina exist' insultum & affraiam fecerunt, & prad W. Garland cum uno gladio de ferro & chalibi ad valentiam quinque solidorum, quem idem Willihelmus in manu sua dextra adtunc & ibidem habuit & tenuit, violenter & felonice, & ex malitia sua pracogitata prafatum Thomam Butcher adtunc & ibidem percusit, dans eidem Thoma Butcher adtunc & ibidem unam plagam mortalem

Cafes of Appeals and Indiaments PART IV. talem super faciem ipfins T. Butcher, & oum prad gladio amputavit nasum suum a facie sua, partem labiorum suorum, ac partem menti sur voc' the Chin. Et prad' Henricus Tong cum quod dam alio gladio, &c. (ut supra) praf T. Butcher antunc & ibid' (a) : Bulftr. 80. percuffit (a) O perforavit, dans eidem T. Butcher adtunc & ibid' unam aliam plagam mortalem circiter pettus ufq; ad offa buno' ipfius T. Butcher, latitudinis unius pollicis & dimid & profundis tatis septem polizium, de quibus quidem plagis & vulneribus se per prafut W. G. & H. T. in forma pradict prius dat, dictus T. Butcher codem fexto die Augusti, anno 27 suprad apud Lewes pred' in com pred' instanter obiit, & pred' Thomas Brewer pred fexto die Augusti, anno 27 supradicto apud Lewes prad' in com' prad' ex malitia sua pracogitata fuit felonice prasens, abettans, procurans, confortans, & auxilians prasatos H. T. & W. G. ad feloniam & murdrum prad' in forma prad' faciend' exequend & perpetrand contra pacem dicta Dom' Regina coronam & dignitatem fuam ; & fic juratores prad' dicunt super sacramentum sum qd' præd' H. Y. W. G. & Thomas Brewer præfat' Thomam Butcher præd' sexto die Augusti, anno 27 supradicto apud Lewes præd'in com' prad' felonice & ex malitiis suis pracogitat' modo & forma pred' interfecer' & murderaverunt contra pacem, &c. And it was mov'd that this Indicament was infufficient, because with (6) Postes 41. 2. plagam mortal' (b) circiter Pettus, was altogether incertain, for Bulft. 308. it might be in the Neck, or in the Arm, or in the Belly, and Rot Rep. 237. Indicaments ought to express in certain as well in what Part it might be in the Neck, or in the Arm, or in the Belly, and the mortal Wound is, as the Depth and Breadth of it, that it may appear to the Court to be mortal, and because 'tissaid that he dy'd de vulneribus & plugis prad' and one of them is incertainly alledged, it makes the Indictment infufficient as to all ; Quod fuit concessum per totam Curiam : And it was faid that the Indictment ought to have been, that if the Party did not dye of the first Wound, that he dy'd of the other Wound, and that is the common Course; Al quod non fuit responsum: And in this Case it was held per totam Curian, that if upon an Affray the Constable and (c) others, in his Jenk. Cent. 291. Affistance, come to suppress the Affray, and preserve the Peace, Cr. Jac. 280.

3 Inst. 52.

and in executing their Office the Constable or any of his AffiHales pl. Cor. 45. Stants is kill'd, it is Murther in Law, altho' the Murtherer

Co. 67. b.

Co. 67. b. knew not the Party that was kill'd, and altho' the Affray was fudden, because the Constable and his Affistants came by Authority of Law to keep the Peace and prevent the Danger which might ensue by the Breach of it; and therefore the Law will adjudge it Murther, and that the Murtherer had Malice prepense, because he set himself against the Justice of the Realm: So if the Sheriff or any of his Bailiffs or other

(c) 9 Co. 68. 2

2 Inft. 318.

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Maof ther Officers is kill'd in executing the Process of the Law, or in doing their Duty, it is Murther; the same Law of a (a) (a) © 0.66.2.68.5 Watchman who is kill'd in the Execution of his Office.

3 Inft. 52.
Cr. Jác. 280.
Hales pl. Cor. 45.

Walker was indicted and outlaw'd of Murther, and the Indictment was, that he struck the Deceas'd in (b) finist parte Tr. 41 Elin B.R. wentris circa umbelicam, and it was resolv'd per totam Curiam, (b) Cr. Jac. 95.
that the Indictment was certain enough, for in finistra parte (c) Antea 40. Be ventris, was of itself certain and sufficient, and these Words 1 Bulstr. 80.
circa umbelicam, which were uncertain, were abundant and 2 Bulstr. 128.
superfluous: But Yong's Case before, was affirm'd to be good 2 Inst. 318.
Law, for there was no Certainty before the (c) circiter: But the Outlawry was revers'd for other Errors, and Walker was put to plead to the Indictment.

I Nquistio indentata capt' apud Basingstoke in com' prad' 21 die 5:

Decembr', &c. coram Johan' Scullard gen' uno Coronator' dict' Southamptoni.

Dom' Regina in com' prad' super visum corporis Edwardi Savage Tr' 28 Elin B.R.
Heydon's Case. gen' tunc O ibidem mortui jacen', per Sacramentum Jacobi Serle, &c. Ad inquirend' qualiter & quomodo præd' Edw' Savage ad mortem suam devenit, qui dic' super sacrm' suum quod Jacobus Heydon de S. in com' prad, Yeoman, T. M. W. M. and several others, quarto die Augusti anno 27 apud B. prad' in com' prad' circa (d) horam decimam ante meridiem ejusdem diei ex malitiis (d) 1 Bulfir. 83: Juis pracogitatis felonice ut felones dicta Domina Regina in dict' Edw Savage adtunc & ibidem insultum & Affraiam fecerunt, O quod prad' Jacobus Heydon cum quodam gladio, Anglice, a Sword, valor' quinque Solidor' quem idem Jacobus in manu sua dextra tenebat, adtunc & ibidem prafat' Edwardum Savage felonice percussit, & dedit eidem Edwardo adtunc & ibidem unam plagam mortalem super sinistrum genu ipsius Edwardi totaliter abstindens quoddam os prad' genu ipfius Edwardi, vocat', the Pan of the Knee, de qua quidem plaga mortali idem Edw' Savage languebat a prad' quarto die Augusti anno 27 usq; ad decimum nonum diem menfis Decembris anno 28, que quidem decimo nono die Decembr' idem Edw' Savage ex mortali plaga præd' apud B: fred in com' pred' obiit, et sic Juratores pred' dic super sacrm' Jum quod pradictus Jacobus Heydon modo & forma pradicta pradittum Edwardum Savage felonice & ex malitia sua pratogitata interfecit & murdravit contra pacem dicta Domina Regina

Cafes of Appeals and Indiaments. PART IV. Regina coronam & dignitatem Juam: Et ulterius prad Juran. res super sacramentum suum prad dicunt quod prad T.M. W.M. Oc. tempore felonia O Murdred prad in forma prad fatt scilicet dicto quarto die Augusti apud B. prad in com' prad' anno 27 Supradicto circa boram decimam ante meridiem ejusdem diei felonice fuer' prasentes cum gladits, O'c. tunc & ibidem auxili antes, affifientes, abettantes, comfortantes O manutenentes prac Jacobum Heydon ad feloniam & murdrum prad' faciend' Opn. petrand' contra pacem dicta Domina Regina coronam & dignitatem fuam. And many Exceptions were taken against this Indictment : 1. Because the Indictment was taken before 7. S. coronatore in (a) com' prad', and did not fay coronatore comita. tus pred', nor (b) de com' pred', and every Coroner of a County is a Coroner in every County of England, but not of eve. ry County; but non allocatur; for the Court faid, that Co. roner in the County, oc. shall be in all reasonable Intend. ment taken to be Coroner of the County, and that is provid (c) F.N.B. 162.k by the Writ de (c) coronatore eligendo, the Beginning of which is, Rex Vicecom', Oc. quia L. nuper unus coronatorum nostrorum in com' tuo diem clauft extremum, &c. And so it is taken in the Lord Willoughby's Case in Plowden's Commentaries, fol. 75 6 76. And Prefidents almost innumerable were thewn in the fame Manner as this is, and it was faid, quod nimia (d) fubilitas in jure reprobatur. 2. Exception was taken, because it was not faid that the faid Edward Savage who was kill'd, was in (e) pace Dei & Domina Regina, (as the usual Form, and the Presidents are) sed non allocatur, for those are Words but of Amplification of the Heinousness of the Act, and not

> of Substance, and perhaps he was not in Peace, but fighting and breaking the Peace, and many Prefidents were likewife thewn in which those Words were omitted. 3. Because twas faid, & dedit eidem Edw' adtunc O ibidem, &c. and did not fay

> Exception was disallow'd by the Court, for this Conjunction

(6) couples the Sentences together, fo that these Words

fer to all the Verbs subsequent, or otherwise too much Repetition and Tautology wou'd be made of the faid Words and many Presidents were likewise shewn to such Effect, and in the fame Form as this is, as to this Point; and these Words adtune & ibid' make this Point clear, for adtune & ibid' make all to be done at one and the same Instant. The 4 Exception was

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(d) 5 Co.121.2. Antea 5. b.

(a) 2 Rolls 203. (b) Godb. 64.66 Plowd. 75-2.

(e) Godb. 65.

(1) Godb.65,66. felonice, nor ex (f) malitia sua pracogitata dedit, &c, and this Dy.68,69. pl.28. Exception was disallow'd by the Court, for this Conjunction Bulftr. 93. (2) Lit. Rop. 68. (2) (felonice & exmalitia fua pracogitata) first mention'd, re-

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scause the Depth (a) and Breadth of the Wound was not (a) Godb. 65,66. thewn, as is always usual in Indictments, so that it may appear to the Court that the Wound was mortal; But it was 5 Co. 12 L. b. 122.4. answer'd and resolv'd by the Court, that it could not be in this Case, because all the Pan of the Knee was (b) entirely (b) 2 Inft. 318. cut off; as if an Arm or (c) Leg is cut off, or if a Man is (c); Go. 12.4. beheaded, the Depth or Breadth of the Wound shall not be thewn. The 5th Exception was, because 'twas faid tempore felonia & (d) murdred prad whereas it should be murdri, and (d) Godb. 65,66. this Exception was also disallow'd, for tempore felonia prad's Co. 121. b. had been sufficient without saying murdred', and therefore the Addition of that shall not make the Indicament insufficient, foralmuch as Murdredum is a Word insensible and vain, fo that no Contrariety or Repugnancy appears, for (e) Surpluf- (e) 5 Co. 121. b. age will not hurt but when it is repugnant or contrary to the Matter precedent or subsequent. The 6th Exception was, because the Wound was given the 4th Day of August, and the Death was the 19th Day of December next enfuing, and the Indictment fays that prad' T. M. W. M. Gr. tempore felonia & murdred' prad' fuit', scilicet 4 Augusti, &c. felonice fupred' faciend': To which it was faid by Gawdy the Queen's (f)Plowd.Com. Serjeant, and Popham the Queen's Attorney, that the Death 401. has Relation to the Stroke, for if a Man non compos (g) men- (s) 3 Inft. 54. tis, strikes himself, and afterwards becomes compos mentis, 1 Co. 99 b. and dies, the Death shall have Relation to the Stroke, and Mo. 140. Stand he shall forfeit nothing, as it is agreed in 22 E. 3. Corone 244, Cor. 19. b. 20.2. So (h) Stamford fays, that the Appeal thall be brought with- (6) 2 Inft. 320. in the Year after the Stroke, and not the Death, for when Dyer 50. pl. 9, 20. the Death ensues, now in Judgment of the Law the Felony 2 Inst. 318, 320. was committed the Day when the Wound was given, for the 3 Inft. 53. Death is but quodammodo the Execution of the Felony; but tota Guria in Banco Regis against that; and they said they had often adjudg'd Indictments insufficient, when the Stroke is one Day, and the Death another, and the Jury concluded the Murther or Homicide to be committed the first Day; but they faid that in the Case at Bar the Indistment should be that the said prasentes & abettantes suerunt prasentes, auxihantes, Oc. ad feloniam & murdrum prad in forma prad faciend. Another Reason to maintain the Indicament was urg'd. because the Indictment notwithstanding that was sufficient (i) 11 Co. 10. b. enough, for the Office of the Jury is to find veritatem facte : 2 Bulft. 204, 251, (i) and the Office of the Judges is to declare veritatem juris; 305, 314 and because they have found the whole Circumst. and Truth of 8 Co. 155. 2. the Fact, that without Question the Law makes them Prin- 9 Co. 13. a. 25. a.

PART IV Cases of Appeals and Indiaments. cipals, therefore altho' they take upon themselves also the

Office of Judges, f. to decide when and at what Time the Felony was committed, it shall not make that vicious which they have found sufficiently and certainly; for in all Cases when a (a) Jury find the Matter committed to their Charge (a) 11 Co. 10. b. Mo. 105, 269. Cr. El. 41, 481, 482. Hob. 53. Plowd.112.b.114 at large, and further conclude against Law, the Verdict is good and the Conclusion ill: Moreover twas mov'd in Maintenance of the Indicam. that the Indicam. against them was good, Hutt. 121. Dy. 361
Hutt. 121. Dy. 361
Hutt. 121. Dy. 361
Pl. 15. Hard. 347
and then altho' Heydon (b) only gave the vooring and then altho' Heydon (b) only gave the Vooring and the Indictment,
Diox 50. Do pears by the Connection of all the Parts of the Indictment,
Plowd. 98. 2.
34 H. 8. Br. Cor. by the Conjunction, and by the Adverbs advanc & ibidem,
171. Rol. Rep. 31 that they were present, &c. And thereupon Wray Chief
Loss. 138.

Loss Sir Thomas Gawdy, Shute, and Glench would be adviin Regard it appears by the Indictment that they all of their Justices, the faid Indicament, as to the said 6th Exception, Vide Cole's Cafe, was held repugnant and insufficient as to the faid T. M. W. M.

(c) 2 Inft. 318.

(2) 2 Inft. 320. 3 Inst. 53. Stamf. 63. 2. (e) 2 Inst. 318.

Pl. Com. fol. 401, O'c. for no Felony was committed 'till the Death, and none shall be adjudg'd a Felon by Relation, which is but (c) a Fiction of the Law: And Wray C. J. faid, the common Experience of the King's Bench was, and so was the Law without Question, that the Year to bring the Appeal thould be accounted from (d) the Death and not from the Stroke, against the Opinion of (e) Stamford: But it was refolv'd, that to conclude that he committed the Murther the last Day was sufficient, but the Cr. EL 196 739 better Form is to conclude that he committed the Murther Dy. 50. pl. 9, 10.

2 inft. 320.3 inft. (f) modo & forma Suprad. 2. That the faid Clause of press. Poste 47. 2. fent, aiding, &c. was necessary, and without it the India
(f) 2 Inst. 318. ment was infufficient, for it shall not be maintain'd by Argument or Implication, nor supply'd by Intendment, and so as to this 2d and last Point it was resolv'd in Milborn's Case, Pasch' 1 Jac. Regis, in the King's Bench; and because the Indicement wanted the faid Clause, he and divers others were discharg'd.

6.

Atharine (g) Hume brought Appeal of Murther against Luke Ogle of the Death of A. H. her Husband, and declar'd Mie 32 & 33 El. Ogle of the Death of A. H. her Hulband, and declard (6) Cr. El. 196. that the Def. 27 Septembris, gave the mortal Wound at Weetwood in com' Northumb', and that the Husb. the same Day of the Wound aforesaid, apud Westlibborn in eodem com' obiit, & fic prad' Lucas Ogle apud Weetwood prad' modo & forma prad' the faid A. H. felonice, Oc. murdravit; and it was resolv'd that the Declaration was repugnant and infufficient, for as it (6)21nft. 218,320. (h) can't be faid, that he murder'd him the first Day, as it inst. 53. was adjudg'd before in Heydon's Case, so it can't be said that by 50. pl. 9, 10. he murder'd him at the (i) Place where he was struck, but Gr. El. 196, 739 he murder'd him at the (i) Place where he was struck, but

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HUdson brought Appeal of Maihem against Lee, and de- 7. Clar'd that the Def. the 8th Day of Jan. 28 Eliz. felo-Hudson, v. Lee. nionsly maihem'd him in his Left Hand, &c. The Defen- 1 Leon. 51. 311 dant pleaded that heretofore and before the Appeal commen- Goulds 33. ced, the Plaintiff brought an Action of Trespass in the Com-Styl. 347. mon Pleas of Assault, Battery and Wounding, against the Def. the same 8th Day of January, anno 28 aforesaid, to which the Defendant pleaded not guilty, and was found guilty, and Damages affess'd to 200 Marks for the Affault, Battery and Wounding, and 10 s. Costs, and Judgment thereupon given and Satisfaction acknowledged before the Appeal brought, and averr'd, that the Battery and Wounding in the said Action of Trespass, and the said Maihem, whereof the Appeal is now brought, was all one and not feveral: And it was mov'd, that it was no Bar for two Reaions. 1. Because the Appeal of Maihem is of an higher Nature than the Action of Trespass, for in the Appeal the Plaintiff declares that the Def. felonice maihem'd him, vide 40 Ass. 9. where the Plaintiff declares, that the Def. felonice (a) ut Felo Dom' Regis maihem'd him, and the Rule of the (a) Br. Appealy 2 Law is, that a Recovery or Bar in any Action is a good Bar in another Action of an equal or inferiour Nature, but not in an Action of a (b) superiour Nature, as a Recovery or (b) 6 Co. 7. b. Bar (c) in Assis is a good Bar in another Assis, 44 E. 3. 45. (c) D 9 H.7. 23, &c. but not in (d) Mortdauncester, 5 Aff. 1. nor (d) Doct.pla.s. is a Recovery or Bar in Mortdauncester, a Bar in a Writ of Right, (e) F. N. B. 5.30 Aff. 5. 11 E. 3. Entre 56, Oc. And a (c) F. N. B.5 m. Bar in an Action of Trespass of (f) Goods taken away is no Bar in Appeal of Robbery, for the Appeal of Robbery is higher, as it is held in 2 R. 3. 14. And this was mov'd, admitting the Appeal was brought for the same thing for which the Action of Trespass was brought: But 'twas further mov'd, that the Appeal is brought for the Maihem only, and therefore it is said felonice, which can't be apply'd to Trespass, Br. Appeal 60. and the Action of Trespass for the Battery and Wounding, Br. Trespass 24. which does not touch the Maihem: and therefore it's agreed (b) Doct.pla.67, in 22 Aff. 82. That after the Plaintiff in the Appeal has re-1 Leon. 19, 319. cover'd for the Maihem, (g) he may have an Action of Tref-Moor 268. pass for the Battery, whereby it appears, that the Appeal (1) Rolls 112. pass for the Battery, whereby it appears, that the Appeal (1) Rolls 112. See 10.118. concerns the Maihem only: But it was refolv'd per totam Ventravo, 500. Gwiam, that the (h) Bar was good, for in all Cases when the Cr. lac. 481. Plaintiff for a Wrong or Injury is only to recover Damages, 1 Rol. Rep. 96. he shall not be twice satisfy'd for one and the same Thing, Bridgm. 132. juxta illud; (i) neme debet his puniri pro uno delicto, & (k) Deus (a) 8 Co. 118. b. non agit his in ips; But in both these Actions, s. of Appeal, and (i) Co. Lie. 500. Trespass the Pl. shall cally recover Damages. Trespals the Pl. shall only recover Damages (1) and it appears to Co. Lit. 126 b.

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Cafes of Appeals and Indiaments. PART IV.

the Court by the Defendant's Bar, which the Plaintiff by his (\*)Hurt.Art.57 (\*) Demurrer has confess d, that he himself in the Action of Trespass, which he brought for the Battery and Wounding, has recover'd Damages for the Maihem, for Wounding includes the Maihem and more, and the Def. has averr'd, that the Wounding in the Action of Trespass, and the Maihem in the Appeal were all one: fo altho' the Appeal of Maihem is an higher Action, yet forafmuch as he shall therein only recover Damages, and Damages he has recover'd in the Action of Trespals, it was therefore resolv'd, that the Bar in the Case at Bar was good : And Wray Chief Justice faid, that fo it was (b) now lately adjudg'd in this very Court, which Record he had feen, and it agreed with the Book in 41 Aff. 16. and the Book 2 R. 3. 14. is good Law, for in the Appeal of Robbery the Plaintiff shall have Judgment against the Defendant for his Life, and not for any Damages.

(b) Moor 268. 1 Lcon. 319.

T was resolv'd per tot' Curiam, That if Principal and Acceffory are, and the Principal (c) is pardon'd, or has his Tr. 32 El. in Syer's Cafe Litelant Cro Clergy, the Accessory can't be arraign'd; for the Maxim of the Law is, ubi factum nullum, ibi fortia nulla; & ubi non eft Principalis, non potest esse Accessorius: Then before it appears, Dat. Juft. 401. E. 4-9 b. Fitz Inft. 32. b. that there is a Principal, one can't be charg'd as Accessory, but none can be call'd Principal, before he is so prov'd and 33. 2. a. Rolls #77. Vent. Nat. Br. 117-b-7H-7-12-b adjudg'd by the Law, and that ought to be by Judgment upon Verdict or Confession, or by Outlawry, for it is not suf-117.b.7H.7.12.b.

Fitz Corone 52.

Br. Clergy 16.

\$ Inft. 114, 139.

Cr. Car.566,567.

Plowd. 99. 2. b.

\$ Co. 117. 2.

2 Inft. 183, 184.

Stamf. Cor.47.b.

48.2. 11C0.35.2.

Cr. El. 541.

3 H. 7. 1. b.

Br. Corone 136.

Br. Clergy 15.

Fitz. Cor. 58.

9 Ha 7. 19. b. ficient that in rei veritate there was a Principal, unless it so appears by Judgment of the Law, and that is the Reason that when the Principal is pardon'd, or takes his Clergy before Judgment, that the Accessory shall never be arraign'd, for it don't appear by Judgment of the Law that he was Principal, and the Acceptance of the Pardon, or praying of the Clergy is an Argument, but no Judgment in Law that he is guilty: But if the Principal after Attainder, is pardon'd, or has his Clergy allow'd, there the Accessory shall be arraign'd, be-H47. 19. b. cause it appears judicially that he was Principal. Moor 461. YOHN Goff (d) Brother and Heir of R. Goff, brought Ap-

J peal of Murther of the faid R. G. against Bibithe as Princi-Cor.137,157, pal, and against Hoell David as Accessory before, and against Paich 30 Blie. David ap Thomas as Accessory after the Principal pleaded Bibihe Case. not guilty, and by Nist prius in the County of Monmouth, he fall 140, was found guilty of Manslaughter, and not guilty of Murther, and had his Clergy: And upon this Matter, fielt it was refolv. by Poph. C. J. & per tor Cur in B. R. that Hoelf David

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PART IV. Cases of Appeals and Indiaments.

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was discharged, because he could not be accessory before the Fast in Case of (a) Manslaughter, for Manslaughter ought to (a) Mode 464; ensue upon a sudden Debate or Affray, for if it is premedita-Halespl-Cor.217. ted it is (b) Murther. 2. It was resolved, that althoe the (b) Co.Lit.287.b Principal (c) was convicted by Verdict, yet forasmuch as he sinst 55.b. had his Clergy before Judgment, so that it don't appear ju-11 Co. 35. a. dicially, s. by Judgment of the Law that he was a Principal, Cr. El. 541. Anter 43. b. therefore and for the Causes alledged in Sper's Case, it was awarded, that both the Accessories, as well before as after should be discharged. The same Law, if the Principal upon his Arraignment confesses the Felony, and before Judgment obtains a Pardon, or has his Clergy allowed, the Accessory thereby is discharged, Vide 2 E. 3. 27. 22 E. 3. Corone 260. 7 H. 4. 16. 10 H. 4. 5. 3 H. 7. 1. b. & 3 H. 7. Corone 53. And upon divers disagreeing Opinions, you will understand the Law, as here it was adjudged upon Consideration of all the Books.

William Vaux at the Sessions of Peace for the County of IO. Northumb. held 27 Julii, anno 32 Eliz. before the Justi-Pasch' Vaux's ces of Peace of the same County, was indicted of voluntary B. B. poysoning of Nicho'as Ridley, which Indictment was remov'd into the King's Bench: And in Discharge thereof the said. 30 Eliz. at Newcastle upon Tine in the County of Northumberland before the Justices of Assile of the same County the said Vaux was indicted; Quod cum Nich' Ridley nuper de W. in com' prad' Armig' jam defunctus, per multos annos, ante obitum fuum nuptus fuisset cuidam Margareta uxori ejus & nullum exitum habuit, pred Will Vaux nuper de K. in com C. generof. subdole, caute, & diabolice intendens mortem, Venenationem, & destructionem iffius Nicholai, & Deum pra oculis non habens, 20 Decembris anno 28 Eliz. apud W. pradict felonice, (a) voluntarie, & ex (a) Cr. Jac. 438. malitia sua pracogitata, per suadebat eundem Nichol' recipere & bibere quendam potum mixtum cum quodam (b) veneno vocat (b) 3 Inft. 48. (c) Cantharades, affirmans & verificans eidem Nich 4d' pred (r)Palm.547,542 potus he mixtus cum prad' veneno vocat' Canth' non fuit intoxicalus (Anglice poison'd) sed quod per reception' inde pred Nich' exis de confore dicta Margareta tunc uxoris sua procuraret or haberet, natione cujus quidem persuafionis & infligationis pred Nich' postea, scil. 16 Januarii anno supradicto apud T. in com' N. prad nesciens pradict potum cum veneno in sorma pradict fore mixt', (d) jed fidem adhibens pradict' persunfioni dicti (d) : Vente 24 Willielmi recepit & bibit, per quod pradictus Nicholaus immediate post receptionem veneni pradicti per tres boras im-64

Cases of Appeals and Indiaments PART IV.

mediate sequent' languebat, & posses prad' 16 Jan. anno supro-(a) Cr. Jac. 438. dill' ex venenatione & intoxicat' prad' apud I. prad' (a) obiit: Et fic prad' Will Vaux felonice O ex malitia sua pracogitata

prafat Nich voluntarie & felonice modo & forma prad intoxi-cavit, interfecit, (b) & murdravit, contra pacem, &c. Upon (4) 5 Co. 123. 2. which Indictment the faid Vaux was arraign'd before the

fame Justices, and pleaded not guilty: And the Jurors gave a special Verdier, and found, Quod pred' Nich' Ridley venenatas fuit, Anglice, poisoned, per receptionem prad' Can-tharides, & quod prad' Will. Vaux non fuit prasens tempore quo prad' Nich' Ridley recepit prad' Canth' sed utrum, &c. And thereupon Judgment was given by the faid Justices of Assise in

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this Manner; Super quo visis, & per Cur hic intellectis omnibus O fingulis pramissis, pro eo quod videtur cur' hic super tota materia per veredictum prad' in forma prad' compert', quod prad' venenatio per reception' prad' Canth' & prad' procuratio prad' Will' ad procurand' prad' Nich' ad accipiend' prad' Canth' modo

& forma prout per veredict' prad' compert' fuit, non fuit felonia & murdrum voluntar': Ideo confiderat' eft quod prad' Will' Vaux,

de felonia & murdro prad'in indictamento prad' superius specificat', necnon de dicta felonica venenatione prad' Nich Ridley in codem Indictamento nominati eidem Will' imposi' eat fine die : And as to the Felony and Murther he pleaded not guilty.

And first, it was resolv'd per totam Curiam, That the said Indicam. upon which Vaux was arraign'd was insufficient, and principally, because it is not expresly alledg'd in the Indiement, that the faid Ridley receiv'd and drunk the faid Poifon, for the Indicament is, prad' Nich' nesciens prad' potum cum veneno fore intoxicatum, sed fedem adhibens dicti persuafioni dicti W. recepit & bibit, per quod, &c. So that it doth not appear what thing he drunk, for these Words (venenum pred') are wanting, and the Words subsequent, scil. per quod prad N. immediate post receptionem veneni pradict, Oc. which Words imply Receipt of Poison, are not sufficient to maintain the Indicament, for the Matter of the Indicament ought to be full express, and certain, and shall not be maintain'd by Argument, or (c) Implication, because the Indistment is found by the Oath of Laymen. 2. It was agreed per Curiam, That Vaux was a principal (d) Murderer, altho' he was not present at the Time of the Receipt of the Poison, for otherwise he would be guilty of such horrible Offence, and yet should be unpunish'd, which would be inconvenient and mischievous; for every Felon is either principal or accessory, and if there is no Principal there can be no Accessory, quia (e) Collingan (e) accessorium sequitur principalem, and if any had procu-palm. 434. red Vanz to do it, he had been accessory before; quod 2014

Staml. Cor.

(d) 2 Inft. 183. 3 Inft. 48, 138. Jenk. Cent. 290.

ats a special Case, where the Principal and Accessory also shall both be absent at the Time of the Felony committed. 2. It was refoled by the Lord Wray, Sir Thomas Gawdy, Clench o Fenner Justices, that the Reason of Auterfoits acquit was, because where the Maxim of the Common Law is, That the Life of a Man shall not be twice (a) put in Jeopardy for (a) Postes 47. 20 one and the same Offence, and that is the Reason and Cause that Auterfoits acquitted or convicted of he same Offence is a good Plea, yet it is intendable of a (b) lawful Acquittal (b) 3 Infl. 214. or Conviction, for if the Conviction or Acquittal is not law-Cr. Car. 147. full, his Life was never in Jeopardy; and because the Indiffment in this Case was insufficient, for this Reason he was not legitimo modo acquietatus, and that is well prov'd, because upon such Acquittal he shall not have an Action of (c) Con-(c) 3 Inst. 243. spiracy, as it is agreed in 9 E. 4. 12. a. b. vide 20 E. 4. 6. And Palm. 45.

Bridgm. 132. in fuch Case in Appeal, notwithstanding fuch insufficient Br.Conspiracy23 Indicament, the Abbettors shall be enquir'd of as it is there also held; and altho' the Judgment is given that he shall be acquitted of the Felony, yet this Acquittal shall not help him, because he was not legitimo modo acquietatus; and when the Law faith, that Auterfoits acquitted is a good Plea, it shall be intended when he is lawfully acquitted; and that agrees with the old Book in 19 E. 3. Corone 444. (d) where it is (d) 1 Bulftr. 142 agreed, if the Process upon Indictment or Appeal is not suf- Scamf. Cor. 1063 ficient, yet if the Party appears (by which all Imperfections F. N. B. 115. & of the Process are sav'd) and is acquitted, he shall be discharg'd; but if the Appeal or Indictment is (e) insufficient (e)Hal.pl.Co.244 (as our Case is) there it is otherwise: But if one upon an in-Postea so. 47. 2 stams. Cor. 1062 fussion Indictm. of Felony has Judgment 4d' suspend' per coll', Doct. pla. 36, 67and so attainted, which is the Judgment and the End which 3 Inft. 214.
the Law has appointed for the Felony, there he can't be 2 Leon. 160. again indicted and arraign'd 'till this Judgment is revers'd by (f) Error: But when the Offender is discharg'd upon an (f) Hales pl. insufficient Indicament, there the Law has not had its End, cor. 247. nor is the Life of the Party in the Judgment of the Law ever in Jeopardy, and the Wisdom of the Law abhors that great Offences should go unpunish'd, which was grounded without Question upon these ancient Maxims of Law and State: Maleficia non debent remanere impunita, & impunitas continuum affectum tribuit delinquendi, & minatur innocentes qui parcit nocentibus: So if a Man is convicted either by Verdia. or by Confession upon an insufficient Indicament, and no Judgment thereupon given, he may be again indicted and arraign'd, because his Life was never in leopardy, and the law wants its End: And afterwards upon this new Indiffment the faid Vaux was try'd and found guilty, and had his Judgment, and was hanged. Catherine

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Cases of Appeals and Indiaments. PART IV Cutherine late the Wife of Robert Wrote brought an Appeal of the Murder of her Husband against Thomas Wigges, and declared, that the faid T. Wigges at Shepperton in the County of Middle fex 23 Septembr' anno 31 Eliz. of his Malice forethought feloniously struck, &c. whereof the said Rob. Wrote died 24 Septemb. then next following, Oc. and fo the Def. murder'd him the 24 Septemb' aforesaid. The Defendant pleaded that he himself heretofore 8 Octob' anno 31 Reg. Eliz. at Shepperson aforesaid by an Inquisition there then taken before William Danby then Coroner of the Queen's Houshold, and Iron Chaukhill then one of the Coroners of the faid County of Midd' upon the View of the Body of the faid Rob. Wrote by the Oath of 12 Men (and shewed their Names) of the faid County of Midd was presented. That the faid 23 Sept. 31 Eliz. at Sheperton aforesaid, the faid Rob. Wrote feloniously did frike, Oc. whereof he died the 24 Sept. following, and so indicted him of Manslaughter. which Inquisition afterwards 23 Stptemb' 32 Eliz. at London in the Parish of St. Sepulchres, the faid Iron Chaulkill then one of the Coroners of the faid County of Midd' at the Gaol-delivery at Newgate, made for the faid County of Midd' there, viz, at Justice-Hall in the Old Baily, before John Hart then Mayor of the City of London, and other Justices of Gaol-delivery of Prisoners in the said Gaol of Newgate being delivered and certified; upon which the faid Thomas Wigges then under the Custody of the Sheriffs of London was brought to the Bar; and there then the faid Thomas Wigges being arraigned upon the faid Indiament, confessed the Felony, and prayed his Clergy; and the Book being delivered to him he read as a Clerk as by the faid Record appears, and faid that no Judgment was given thereupon; and averred, that Shepperton at the Time of the faid Inquisition, and Stroke and Death was within the Verge of the Queen's Houshold, and pleaded over to the Felony, Oc. And it appeared that the faid Arraignment and Confession and Allowance of the Clergy was after the Purchase of the Writ of Appeal \* and before the Return of it. Upon which Plea in Bar the Pl. demorr'd in Law. And after many Arguments, and great Deliberation, it was adjudged against the Def. And in this Cafe fix Points were resolved. 1. That Anterfois (a) Convict of Manflaughter, and Clergy thereupon allowed was a good Bar in an Appeal of Murder, and so was it adjudged in an Appeal in B. R. between T. Burghe Efg. Broth and Heir of H. Burghe, and T. Holoroft (b) Esq; Bafch. 20 Eliz. of the Murther of the

faid H, where the Def. pleaded, that at Hampton Court in the Parish of Hampton in the County of Midd' within the

Verge, by an Inquisition taken before R. Vale then Coroner

of the Queen's Houshold and one of the Coroners Com' Midd'

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Afish, 13 & 14 Eliz, Wrote v Wigges Cr. Eliz, 296.

\* Arrica 47. b.

(a) Yelv. 205. Antea 40. 2. 16 E. 4. 11. 2.

(b) 3 Inft. 131. 2 Leon 83, 160, 161. 1 Anderf. 68. Co. Entr. 53. b. pl. 4. PART IV! Cases of Appeals and Indiaments:

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(wher wifus durporis, the Def. was indicted of the Manflaughter of the faid Henry within the Verge; upon which Indiament the Def. was arraigned before Commissioners of Over and Terminer in the County of Midd and confessed the Indiament, and prayed his Clergy, and thereupon Caria advilare vult, and demanded Judgment of the Appeal; and in that Case two Points were resolved. 1. That that Indidment was well taken, and within the Stat. of Articuli Juper chartas cap. (a) 3. by which it is enacted, That in Cafe (a) 6 Co. 12.2. of the Death of a Man within the Verge, it shall be come 89. b. 74.2. manded to the Coroner of the County, that he with the 3 Keb. 336.

Coroner of the King's Houthold, shall do as belongeth to 1 Inst. 134. Cro. his Office. And altho' it was objected, That the Stat. re- \$1,502. 1 Bulft. quires two Persons, f. two Coroners to do the Office which 211, 212.2 Leon. appertains in this Case; and in the Case at Bar there was 160. 5 E. 4. but one Person, altho' he had two several Offices, f. Coro-sur le Statute ner of the Houshold, and one of the Coroners of the Coun- 38, 49. 10 H. S. ty, and when the Law gives Authority to two Persons, one 185. 2. 191. b. only can't execute it; for (b) Securius expediantur negotia F. N. B. 241. commissa pluribus, & plus vident (c) oculi quam oculus, & una (b) 11 Co. 3. b. (d) persons non potest supplere vicem duarum: Yet in this Case ? Lit, Rep. 96. of several Authorities, it was resolved that the Indiament (d) Carely 209. was well (e) taken, for the Intent and Meaning of the Act (e) 3 luft. 134. was performed, and the Mischief recited in the Act avoided: as well when one Person is Coroner of the Houshold. and of the County also, as if there should be two leveral Persons, for altho' the Court removes, yet he as Covided by the Stat. of 3 H. 7. (f) cap. 1. That if it fortune (1) 3 Infl. 213, that the Felons, Murderers, and Accessories, or any of them 106. b. 107. a. be acquitted upon Indichment, or the Principal attainted, Go. F. N. B. 115. h. the Wife or next Heir to him fo flain, may have their Appeal against the Persons so acquitted, or against the Prancipals so attainted, of they be alive, and that his Benefit of his Clengythereof before be not had; (for at that Time Clergy was allowed for Murder.) It was resolved that the Bar was good at the Common Law not reftrained by the faid Act, because if the Def. had had his Clergy, then without Question the Appeal wou'd not lie; for if the Offender is attainted, and has his Clersy, it is excepted out of the Act and left to the Common Law; a fortiors when he is but convicted thereof and prays his Clergy, and the Act of the Court (to be advised as to the Allowance of Clergy) thall not (g) prejudice the Party in (s) 3 Inft. 131. Cafe of Life: but it was resolved, that these Words (Attainted Murder) in this Act shall not be intended only of a Perfon who has Judgment of Life, but also extend to a Person convicted by Confession, or Verdiet; for a Person attainted is (b) 2 Co. 68. 2; Person convicted and more, & (b) omne majus continer in fe 6 Co. 115. 2. Minus; and if the Stat. should not extend to Persons convict- 3 Inst. 109. ed all the Purview of the Act would be overthrown. And Lit. 52. b. 285. 2. in the Statute of 25 E. 3. cap. 2. it is faid attainted by Ver- 2 Bulftr. 48. dict, which is as much as to fay, convicted by Verdict, and

#### Cases of Appeals and Indiaments. PARTIV.

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(c) Cro. El. Latch, 126. O. Bendl. 144 Moor 407. Britton lib.

many Times in common Speech a Person convicted is cal-(a) 3 Keb. 20. led a Person attainted; & (a) loquendum eft ut vulgus: Al-Cart. 132 Hetl. fo it wou'd be hard that the Law shou'd enable the Party to appeal against a Person acquitted, who by Judgment of the Law is innocent, and shou'd not enable him against one who is convicted who is found guilty: And in that Case it was said that it was adjudged in the Case of one Agnes Gainsford, that where the said Act of 3 H. 7. cap. 1. is, That the Wife, or Heir of him so flain shall have the Appeal; Thatthe Heir of a Wo. who was murd. shall have Appeal against one (b) 6 Co. 65. 2. who was acquit. of the same Murd. for (b) apices juris non junt 20. Co. 126.2. Co. jura: And it was resolved without Diffic. in Holcroft's Case, Lit. 283. b. jura: And it was resolved without Diffic. in Holcroft's Case, 304 b. Noy. 30. that if a Man commits Murder, and is indict. and conviet. or acquit of Manslaugh. he shall never answer to any Indie. of the same Death, for all is one and the same Felony for one and the same Death, altho' Murder is in Respect of the Circumstance of the Forethought Malice more odious; and theref. in an Indictment, or Appeal of Murder, he may be found guilty (c) of Manslaughter. 2. It was resolved in the Case at Bar, That at Com. Law the Coroner of the K's House has an exempt Jurisdiction within the Verge; and that the Coroner of the County can't intermeddle therein; and that well appears by the Preamble of the said Stat. of Articuli super chartas; And fora much as heretofore many Felonics committed within the Verge have been unpunished (and the Reason and Cause thereof was) because the Coroners of the Country have not been authorised to enquire of such Manner of Felonies done within the Verge, but the Coroner of the King's House which never continueth in one Place, by Reason whereof there can be no Trial made in due Manner, nor the Felons put in Exigent, nor Outlawed, nor any Thing presented in the Circuit, the which. hath been to the great Damage of the King, and nothing to the good Preservation of his Peace: By which it appears, that at Common Law the Coroner of the County could not intermeddle with the Death of a Man within the Verge, but the Coroner of the Houshold only, and fo was it adjudged Pasche 24 Eliz. in B. R. where Swift was indicted before the Coroner of the County of Middle sex of a Murder committed at Tutbil in Com' Midd' which Indictment was removed into B.R. and there Swift pleaded, That Tuthil was at the Time of the Murder, and yet is within the Verge, &c. upon which the Queen's Attorney demurr'd in Law, and it depends ed in Advisement 3 Terms, and at length the Plea was adjude ged good, and thereupon he was discharged of the Indian. for as the Coroner of the Houlh. can't intermeddle within the County out of the Verge, because his Office extends not to it, fo the Coroner of the County can't intermeddle within the Verge; for that was exempted out of his Office by the Common Law, and it wou'd be against Reason that their Offices and Jurisdictions being several that the one shou'd intermeddle within the Jurisdiction of the other. But it was resolv'd, that the Justices (d) B, R. Justices of Oyer and

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Terminer, Gaol-delivery, (a) and Justices of Peace, may en-(1) 2 Inst. 549 quire of, hear and determine all Murders and Felonies within the Verge, because their Authority and Jurisdiction are general thro' the whole County, and so always it has been used, and fo it was adjudged without Scruple in Holcroft's Cafe. It was resolved, That the Indicament was insufficient, for by the faid Indictment taken before the Coroner of the Houshold, and the Coroner of the County, it appears that the Stroke and the Death were at Shepperton in Com' Midd' and it doth not appear in the Indicament that Shepperton was within the Verge, Scil. (b) within 12 Miles of the Lodging (b) 10 Co. 72.6 of the King in his Court; and altho' in Truth it was with-74. 2. F. N. B. in the Verge, yet the Indictment being (c) veredictum, i. e. c. 3. 27 H. 8. dictum veritatis, and Matter of Record ought to import all the c. 5 & 33 H. 8. Truth which is requisite by Law, for de (d) non apparentibus (e) Co. Lit. Or non existentibus eadem ratio, and every Part of the In- (d) 5 Co. 5. b. dictment material ought to be found by the Oath of the In- Cawdry's Case. dictors, and can't be (e) supplied by bare Saying or Aver-Vaugh. 72.
ment of the Party; and because it doth not appear within 20. 92. 1 Inst.
the Indictment that Shepperton was within the Verge, for this 3 Bulstr. 110.
Cause the Indictm. taken before the Coroner of the Houshold, (e) 5 Co. 120. b.
and the Coroner of the County is insufficient; for it doth not 22 E. 4. 12. appear that the Coroner of the Houshold had any Authority to take it, and it shall not be as void and coram non Judice as to the Coroner of the Houshold, and good before the Coroner of the County, for the Record is intire, and the Indiffment taken before both intirely, and perhaps the Jury was directed principally by the Coroner of the Houshold, and the Witnesses examined and sworn by him, altho' all is recorded and enrolled in both their Names: Also the Def. has averred in his Plea that Shepperton was within the Verge, so that the Coroner of the County as appears by the Confesfion of the Def. himself could not take it solely. 4. It was refolved, That for as much as the Indictment upon which he was convicted was (f) infufficient, notwithstanding such Con-(f) Hales pl. viction, he may be indicted and arraigned again, or appealed Cor. 244, 247. of the same Offence, because his Life in Judgment of the 106. a. Doc. plz. Law was never in Jeopardy as it was resolved in Vaux's 36, 37. 3 Inst. Case before, Pasch. 33 E. 5. It was resolved per tot' Cur', that where the Stroke was given the 23 Day of Sept' and the Death followed the 24 Day; and concludes that the said T. Wigges murdered the said Rob. Wrote the (g) 24 Day, that it (s) Anter 42. b. was good enough, for it was not Murder before; but 3 Inst. 318, 320. to conclude that he murdered him the 23 Day was re-El. 196, 739. pugnant, as it was resolved before in Heydon's Case, Trin. 10. Stams. 63. 2. 28 Eliz. But it was resolved that the finding of the Stroke, and the Death was not sufficient by itself without making Conclusion, that is to say, and so the said Tho. Wigges murder'd the faid Rob. Wrote, Oc. 6. It was refolv'd, (h) : Jones 145. That tho' the Conviction was (h) pending the Appeal

Cases of Appeals and Indiaments. PARTIV

Ancer 45. by yet if it had been (a) lawful, and before the Def. was come pell'd to plead, it had been a good Ban. And afterward Wieges was tried in B. R. and upon his Trial, the Queen's Attorney was of Council with him, (because it was a Sub ject's Suit) and Wigges was found Not guilty of the Murder

HE Wife of William (b) Waits Gent' brought an Ap

12. Hill' 45 Eliz. in B. R. Wait's af (6) Jenk. Cent. 29. 2 Inft 183.

peal of Murder of her Husband against divers; and afterwards the brought another Appeal against others; and in all the had brought feven Appeals of the faid Murder against several Persons as Principals; And it was resolved by Popham G. J. O' totum Cyrium, That all the faid Appeals

but the first ought to abate; for without any Difficulty all the Principals and Accessories before the Murder, and also all Accessories after, and before the Writ purchased, against whom the Pl. would bring Appeal ought to be named in one Writ, and not in divers. (c) 9 H. 4. I. The Wife of Th.

Goter brought an Appeal of Death against Tho. Walton, and

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(c) Jenk. Cent. 29. ph 56. 9 H. 4 2. b. 2. 2. Firz. Coron. 77. Br. Appeal. 28. Kelw. 83. pl. 4. Stamf, Cor.

two others, Walton only appeared, and the others made De fault. The Pl. declared against all three, that is to say, the as Principals, and against the other as accessory: Wallen pleaded. That at another Time the faid Woman made an Appeal of the same Death before certain Justices of Gal-

delivery in the County of N. against one Man as Principal of the same Death, who at her Suit before the said Justice was attainted and hang'd, and demanded Judgment of the

Writ, and pleaded over to the Felony: And it was faidly the Pl's Council that her Writ ought not to abate, because in her Appeal before the said Justices of Gaol-delivery, he

could not charge any, nor could the Juffices of Gaol-deliver make Deliverance of any who then was not in Prifon in the Gaol before them, and that Walton and the others now Defa

then were at Liberty, and therefore it was impossible to joyn them in the faid Appeal before the faid Justices of

Gaol-delivery, and so no Default in the Pl. But it was at judg'd, that the Writ should abate, and in the same Can

2 Points were resolved. 1. That the Pl. ought to have mile her Appeal against all, and afterwards to have removed it

Writ before us in this Place. 2. That the Wife should me have (d) two Appeals of Death in this Place, but out

to join all (whom the will charge) in one and the fame Writ. For if one brings an Appeal of Death against dive

and all but one make Default, yet the Pl. ought to declare gainst all; and by the same Reason that he shall be drive

288. Stamt. Cor. to (e) declare against all, he ought to bring his Appeal 165. b.
(e) Hales pl. gainst all. 3. That in that Case the Desendant shou'd m have (f) Damages by the Statute of W. 2. cap 12. 9

65. b. Pitz. Co- extra casum Statuti, because the Writ abated. Vide. 28 E.

rone 138.
(g) Stamf. Cor. her Hulband against the principal Doer, and the principal doern doern

Cor. 188.

(4) 47 E. 3.16b. Br. Appeal 14. Fitz. Corone

104. Dyer 39. pl. 58. Jenk. Cent.

39. 2 Inft. 183. 7 Co. 2. b. Bul-wer's Cafe. Kelw. 83. pl. 4. Hales pl. Cor.

(f) Stamf. Cor.

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Affishants and Doers, and sued another Appeal against the Receivers, and the Book saith, That the two Appeals were maintainable, notwithstanding the Statute gives that all shall be in one Writ, which are the Words of the Book, in which the Statute intended is the Statute of Magna Charta, c. 34. by which it is enacted, That (a) Nullus capiatur propter ap- (a) 2 Inst. 68. pellum semina de morte alterius quam viri sui: And because Stams. Cor. 58.b. the Statute saith Appellum in the singular Number, it was collected that all ought to be named in one Writ; which Book, if it can be maintained for Law, ought to be intended of Accessories after the first Appeal brought, which could not be named in the first Appeal brought, which to the same Effect.

Inquisitio capt' ad Session' pacis, &c. in Com' Surr', tent' peal 65.

I die Martis & die Mercuris, &c. and recites the Statute of Hill' 30. Eliz.

(c) 8 H. 6. of Forcible Entry, and missecites it in some (c) 8 H. 6. c. 2.

Points; and this Indictment was quashed for two Reasons:

1. Altho' the Sessions might last two or three Days, yet the Record ought to mention, that the Sessions were held at one certain (d) Day: 2. Also because the Statute of 8 H. 6. (d) Palm. 44.

was missecited in a material Point: Know Reader, it is not Policy in such Indictments to (e) recite the said Act of (e) Cro. El. 96.

8 H. 6. for the Recital thereof is not necessary, and Misse-307, 697, cital thereof is fatal to the Indictment, and therefore the sure Way is to draw the Indictment with Conclusion, (f) (f) Aleyn 50. contra formam Statuti, &c. and with no Recital of the Act.

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## Hill. 29 Regina Eliz. In Communi Banco.

### ANDREW OGNEL's Cafe.

Na Replevin between Andrew Ognel Plaintiff, and This mas Underhill, and Henry Appelby Defendants: The Case was, William Rainsford anno 4 E. 6. posses'd for 30 Years of a Farm called Crewelfield Grange, which consisted of divers Parcels known by feveral Names, Scil. Hobbes-field, Park field, and divers others, made his Will, and thereof appoint ed Hercules his Son his Executor, who 3 & 4 Ph. & Mar. de-mised all the Grange, (except Hobbes-field) to one Henry Bere for 23 Years; and demised Hobbes to Walter Freeleton for 23 Years; and afterwards granted all the Residue of his Term in the whole Grange, to the faid Henry Bere and Frecleton; he in the Reversion in Fee anno 13 El. Regina, by his Deed granted a Rent-Charge in Fee issuing out of all his Lands and Tenements, communiter vocat' Crewelfield Grange, quon-(e) Cro. Car. 130. dam in tenura Will' Rainsford, & adtunc in tenura & (a) occupal Hob. 171. 1 Rol. Rep. 261. Henrici Bere vel assignator' suorum. The Rent is behind, the 196. Palm. 120. said Term for 30 Years expires, he in Reversion makes a Feoffment in Fee of the said Farm to another, the Grantee makes his Executors and dies, the Feoffee makes a Leafeat Will, the Executors of the Grantee diffrein for the Rent arrear in the Life of the Grantee before the Expiration of the Term; and Judgment was given for the Executors against the Plaintiff. And in this Case three Points were resolv'd, s. two at the Common Law, and one upon the Statute of 32 H.8. cap. 37.

The first Point was, That at the Common Law there was Difference between Annuity in Fee, and Rent-Service, Charge or Seck; for in Case of Annuity altho' it continues, yet in some Case an Action of Debt may be maintainable for the Arrearages; as if (b) a Parson or Prebendary, oc. has an Annul ty, and the Annuity is arrear, and Parson or Prebendary, Oa resigns he shall have an Action of Debt for the Arrearages

Lit. Rep. 25.

) Poftes 49. b.

So if the Parson or Prebendary dies, his (a) Executors shall (a) F.N.B. 120.L. have an Action of Debt for the Arrears incurr'd in the Poster 49. b. Life of his Testator, because the Person of him who ought to pay the Annuity, is chargeable in a Writ of Annuity: But otherwise it is in Case of Rent, be it Rent Service. Rent Charge or Seck, for when the Rent continues of any Estate of Freehold, no Action of Debt lies for the (b) Ar-(b) 9 Co. 38. b. rearages: Also at the Common Law great Difference appears when Rent in Fee is extinct either by Act in Law, or by 1 Roll. 594. Act of the Party, and when particular Estates in Rents expire or determine: And therefore at the Common Law, if the Son be Lord, and the Father Tenant by certain Rent, the Rent is Arrear, the Tenant dies, and the Tenancy descends to the Son, in that Case the Rent is determin'd and extinct by Act in Law, and yet the Executors of the Lord hall not have an Action of Debt for the Arrears incurr'd in the Life of the Testator, because the Lord himfelf could by no Poffibility have an Action of Debt for the Arrears, for the Tenure was all in the Realty, and the Tenant could not be charged in any Personal Action for them. But if a Woman is endow'd of a Rent, or if a Rent is granted for Life, and the Tenant attorns, the Rent is Ar-rear, and afterwards the particular Estate in the Rent determines by Death, the Executors of the Tenant in Dower, or of the Grantee for Life, shall have an Action of Debt by the Common Law for 2 Reasons. 1. Because by Possibility the Testator himself might have an Action of Debt, for if he had furrender'd his Estate to him in Reversion, he hould have an Action of Debt for the Arrearages incurr'd before. 2. These particular Estates with the Attornment of the Tenant, or when the Law supplies Attornment, amount o a real Contract in Law, which Realty, when the Estate of Freehold is determin'd, dissolves itself into Personalty: and these are the true Differences as to this Point prov'd and approv'd in our Books; and therefore in 45 E. 3. Exeutors 71. where the Case was, that the Father granted a Rent Charge out of certain Lands to his Son in Fee, the Rent is Arrear, the Father dies, the Land descends to the Son, which the Rent is extinct by Act in Law, the Son brings a Action of Debt against the Executors of the Father for he Arrears incurr'd in the Father's Life, and adjudg'd that or them (as Arrears of a Rent) no Action lies, but for the rrears of an Annuity it was maintainable; and altho' by Descent of the Land to the Grantee being Heir to the Granor, as well the Annuity as the Rent was determin'd and that leorig. Election was annex'd to an Inheritance yet inafmuch the Inherit. of both was determin'd by Act in Law, (which ill do Wrong to none) it was therefore adjudg'd, That his lection should remain as to the faid Arrears, which Eleion he has made by bringing the Action of Debt against the Executors

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ANDREW OGNEL's Cafe. Executors of his Father; for the Book fays, that the Son may choose whether he will have a Writ of Annuity or Distress, (a) Dy. 375. plac. Oc. 4 E. 3. Executors 98. A Man makes a Lease for Life(a) rendring Rent, the Rent is Arrear, the Leffor dies, the Executors during the Life of the Tenant for Life shall not have an Action of Debt, but after the Estate for Life determin'd the Action shall be maintainable, 9 H. 6. 43. 14 H. 6. 26. 19 H. 6. 43. 32 E. 3. Dette 9. F. N. B. 121. C. So if Rent is granted for Life, or a Woman is endow'd of a Rent, the Executors of the Grantee, or of the Tenant in Dower shall have an Action of Debt by the Common Law, as appears by 32 E. 3. Dette 9. 34 H. 6. 20. \* 9 H. 7. 17. But in the (6) Co. 18. b. 32 E. 3. Dette 9. 34 H. O. 20.

(b) Co. Lit. 162. b. Case of 11 (b) H. 4. fol. ultimo, when Rent is granted for Life, and afterwards becomes Arrear, and afterwards the Te. nant aliens, and afterwards the Grantee of the Rent dies. the Action shall be maintainable against him who was Tenant, (c) Co.Lit. 162.b. and took the Profits when it was arrear. (c) 26 E. 3. 64. a.b. Sir Will. Loringe's Case. Sir William Loringe was Granteefor Poftes 51 2. Life of a Rent out of the Moiety of a Manor, of which Moiery a Man was seised in the Right of his Wife, the Rent was Arrear; Sir William Loringe dy'd, his Executors brought an Action of Debt against the Husband only for the Arreas-

(e) Antea 49. 2. Co. Lif. 162. b.

(f) Co.Lit.47.b. 83. b. 162. b. 3 Co. 66. a. Dall. 17. pl. 6. Br. Det. 194. Br. Relief 11. Noy 43, 44. O. Benl. 10. (g) Co. Lit.47.b. 83. 2. 162. b. Dall. 17. pl. 6. 1 Roll. 596, 665.

for the Arrearages: So if a Parson or a Prebendary, Oc. who (d) Antez 48. b. has an Annuity (d) resigns, he shall have an Action of Debt Poph. 87.

Br. Det. 94. for the Arrearages incurr'd before the Resignation, 19 H.6. F. N. B. 121. D. E. So if a Prebendary or Par-41. 6. 43. fon, Oc. (e) dies, his Executor shall have an Action of Delt for the Arrearages incurr'd during his Life. Vide 4 H. 6.31. 7 H. 6. 19. 8 H. 6. 7. 19 E. 3. \* Jurisdiction 22. F. N. B. 120. The Executors of the Lord shall have an Action of Debt to (f) Relief, for it is but an Improvement of the Service 1 Roll. 596,665, and so it was adjudged in 32 H. S. Rol. 429. In Leaker 2915. Dy. 24-pl. 149 Vide 11 H. 6. 11. 11 H. 6. 18. 34 E. 1. Avowry 233. But Dy. 140. pl. 37. the Lord himself shall (g) distrein, and shall not have an B. N. C. 176. the Lord himself shall (g) distrein, and shall not have an and so it was adjudg'd in 32 H. 8. Rot. 429. in Leake's Case Action of Debt, as it is faid in 7 H. 6. 13. 22 Aff. 52. A Wo man made a Lease for Life rendring the first 3 Years 1004 and afterwards 40 l. during the first 3 Years she was disselled of the Rent, and brought an Affise, and adjudg'd maintainable for in Judgment of Law all is but one Rent, altho' it is divided in Payment. Vide 15 E. 3. Execution 63. But it was resolved, the Case at Bar, that the Arrears due in the Life of the Grant

ages of the Rent, and there two Points are adjudg'd: One, that by the Death of Sir William Loringe, the Grant for Life was turn'd into Nature of Debt. 2. That forasmuch as the Hulband took the Profits of the Land charg'd with the Rent

when it was Arrear, that he only (without his Wife) shall

be charg'd in an Action of Debt: And there it is held, that after the Death of the Husband the Action of Debt in such

Case shall lie against his Executors. If there is Lessee for

Life of a Manor, and the Rents are arrear, the Tenant for

Life surrenders his Estate, he shall have an Action of Debt

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were loft at Common Law. The fecond Point refolv'd was That Hobbesfield was not charged with the faid Rent by Reafon of these joynt Words; for altho' it is Parcel of Crewelfield-Grange, and that Henry/Bere and Frecleton had the Reversion of the Term, and so the Land might be said in their Tenure; yet forasmuch as Henry Bere had not then Hobbesfield in his Occupation, Hobbesfield is out of the faid Words, by Reason of the said last Clause, scil. & adtunc in tenura & occupatione Henrici Bere. So that by Reason of the Conjunctive, which joyns the Tenure and (a) Occupation together, (a) Hob. 171. nothing is charg'd, but so much of the said Grange only 2 Roll. Rep. 261, as was in the Tenure and Occupation of Henry Bere, and 4 Leon. 115. that was not Hobbesfield; vide for the Exposition of this Lit. Rep. 25, 63. Cr. Car. 130,4485 Conjunctive (Et) (b) 19 H. 6. 4. a. b. & 9 E. 4. (c) 42. b. in the 473. Gold. 237. Case of a Release. The third Point resolved was upon the Hard. 225. said Statute of 32 H. 8. (d) cap. 37. And the Doubt arose 1 And. 178. upon these Words: And it shall be lawful to every such Exe- (6) 5 Co. 7. b. cutor, &c. of any such Person or Persons to whom such Rent (c) 5 Co. 7.b. or Fee Farm is or shall be due and not paid at the Time of his Fitz Release 14. Decease, to (e) distrein for the Arrearages of all such Rents up-(d) Co.Lit.162.a. on the Lands, &c. So long as the said Lands, Tenements, or 3 Leon. 302, 303. Hereditaments, continue, remain, or be in the Seisin or Possession (e) 5 Co. 118. of the said Tenant in Demesne, who ought immediately to have paid the said Rent, &c. be in the Seifin or Possession of any other Person or Persons claiming the said Lands, Tenements, and Hereduaments, only by and from the said Tenant, by Purchase, Gift, or Descent, in like Manner and Form as their said Testator might or ought to have done in his Life: And it was objected, that this Case was out of the said Act, for the said Act extends only to Tenants in Demessee who immediately ought to have paid it, and that was in the Case at Bar, the Grantor and those who claim only by and from him; and in this Case Lesfee at Will of the Feoffee doth not claim only by and from the Grantor, but he claims by and from the Feoffee, and so out of the Statute. And therefore it was said, That the Feossee of the Feossee, and so in infinitum, is out of the said Act; and so, it was said, have like Statute, been construed which are frieti Juris, because they restrain the Common Law, as W. 2. cap. 40. (f) in Gui in vita if the Vou-(f) 1 Co. 15. 2. chee vouches over one within Age the Parol shall demur, 2 Inst. 459 upon these Words (expellet emptor) that the Feoffee 2 Roll. Rep. 246. of the Feoffee is out of the said Act. 16 E. 3. Age 47. Br. Age 43. agrees to the Case of 2 Feoffee 16 E. 3. Age 2. But it 7 E. 2. Age 139. was adjudg'd, that altho' the Lessee at Will doth not claim 14 H.7.18.b.19.2. immediately from the Grantor wet he is within the said Act. immediately from the Grantor, yet he is within the faid Act; for where Things are due in Right and Truth, and become remediless by the Act of God, s. by the Death of him to whom they were due, in such Cases Acts of Parl. which give Remedy

in such Cases, God forbid that they should not have

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(a) 3 Leon. 263 1 Leon. 302,302.

a benign and favourable Interpretation, and extend to ad. vance the Remedy proportionably to the Mischief and De. feet of the Law, according to the Intent and Meaning of of the Makers of the Act. And therefore the second (a) Feoffee, and so over in infinitum, shall be charged by Force of this Act, for what Reason will there be to bind the first Feoffee, and not the second Feoffee, and so all others? And what Reason will there be to bind only the immediate Heir who shall have it by Descent, and not any other mediate Heir? For otherwise as to this Point the Statute will serve to little Purpose, and especially when the first Feoffee may alien the Land at his Pleasure; and all the Sons of Adam are Subject to Death: Some also conceiv'd, that the second Feoffee is within the express Words of the Act, for altho' he is not in by the Grantor, yet he is in from him, for from (b) him, amounts to as much as under bim; and the Word (c) (and) in this Case shall be taken for (or) and this Word (only) was added only to this Purpose, that he ought to claim only under the Tenant in Demesne, and not paramount. As if Tenant in Tail makes a Feoffment in Fee and dies, and the Discontinuee charges the Land with a Rent in Fee, and afterwards enteoffs the Issue in Tail within Age, so that he is remitted, in that Case (only) has its Operation, for now the Issue in Tail claims by Title paramount; But if the Tenant makes a Feoffment in Fee to the Use of another, in that Case Ceffing que use doth not claim only by the Feoffor, but also by the Statute, and he is not in the Per, and yet he claims under the Feoffor, and that was the Intent of the Act: So if the Tenant makes a Gift in Tail, and the Donee dies, the Issue in Tail is within this Statute, for he claims (only) under the Title and Estate of the Tenant in Demesne, altho' he does not claim only by Descent, but also per formam doni: Soil Tenant in Tail be the Remainder over in Fee, the Issue in Tail is within this Statute against the Opinion in Plow. Com. in Manxel's Case 4. b. But it was agreed per totam Curiam, if (d) Vaugh.40,41. A. has a (d) Rent-service, or Rent-Charge in Fee, or for Life, and the Rent is arrear, and afterwards A. grants over the Rent to another, and the Tenant attorns, and afterwards A. dies, his Executors are not within this Branch, for by the faid Grant over, the Arrearages were lost, and were not due to the Testator at the Time of his Death, as the Statute speaks. Also the Conclusion of the said Branch is, In at large and ample Manner as the faid Testator might and ought to have; and after the faid Grant the Testator himself nor any other could distrain, or have any Remedy for the said Arrears: Also in the Clause next preceding touching the Action

Co. Lit. 162. b.

of Debt, the Words are, Unto whom any such Rent or Fee Farm

is or shall be due, and not paid at the Time of his Death: So that the Act gives no Remedy, when the Testator hims. by his own Act has dispensed with the Arrears, but when they were ft

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due to him at the Time of his Death, and by the Act of God become remediles; And in this Case a Judgment upon another Branch of this Statute reported by Serjeant Bendloes, between Sharp (a) Pl. and Poole Def. in Communi Banco Hill. (a) N. Bendl. 263 A Rent Charge was granted by Deed to a Feme fole for Life, Benl. in Aft 31.

A Rent was arrear, the Woman took Sharp to Husband, 162, b. 135, the Rent was again arrear, the Wife died, Sharp brought an Ow. 3. O. Benl. 33 Action of Debt against the Def. Heir of the Grantor (Tenant I And. 47. of the Land charged) for all the faid Arrearages, as well before as after Marriage: And in that Case it was re- (b) 1 Rolls 345solv'd, That for the Arrearages incurred (b) before the Mar- Co. Lic. 162. b. riage, the Husband had no Remedy by the Common Law, (c) Co.Lit. 162.b. but for the Arrears which incurr'd (c) during the Marriage, 351-2. the Hosband in that Case might have an Action of Debt at the Com. Law, 26 E. 3. 64. 10 H. 6. 11. a. b. F. N. B. 121. c. 22 H. 6. 25. a. But it was adjude'd by Force of these Words in the faid Act, That if any Man hath or hereafter shall have in the Right of his Wife any Estate in Fee simple, Fee Tail, or for Term of Life, of or in any Rents or Fee Farms, which be or shall be due behind or unpaid in the faid Wife's Life, that then the Husband after the Decease of his said Wife, his Executors and Administrators shall have an Action of Debt for the said Arrearages against the Tenant of the Demession that ought to have paid the same, his Executors or Administrators: And also may distrain for the said Arrearages in like Manner and Form as he might have done if his said Wife had then been living, &c. That the Husband should have (d) all the Arreara- (d) Colit. 162.1 ges as well due before the Marriage as after: But 2 Objections 3 were made that the Husband should not have the Arrearages before the Coverture: 1. Because by the Com. Law the Executors or Administrators of the Wife might have an Action of Debt for the faid Arrearages before the Coverture; and the Statute as appears by the Preamble, provides Remedy when the Executors or Administrators of him to whom the Rent was due, cannot have or come by the faid Arrearages, &c. And therefore it was faid, That the Makers of the Act did not intend to give Remedy where there was Remedy at the Common Law, nor to take away the Remedy which one had at the Common Law, and give it to another. The fecond Objection was, That the faid Branch touching the Husband, gives Remedy to him for the Arrearages due in the faid Wife's Life; so that the Arrearages ought to incur when the was a Wife, and not before. But notwithstanding these Objections, it was unanimously resolv'd, That the Husband by Force of the faid Branch, should have the faid (e) Arrearages; for (c) Calit. 162.b. the faid Branch enacts, That the Husband shall have the Arrears incurr'd in the Life of his Wife, and that can't extend 1 Roll. 345.

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ANDREW OGNEL's Cafe. PARTIV

to Arrearages during the Coverture, for the Common Law in Cafe when the Wife has the Rent but for Life, gave him fuch Arrearages as appears before. And therefore when the Statute gives an Action of Debt to the Hulband for Arrearages, it ought not to be constru'd to extend to those which he might have by the Common Law before, but to the Intent that cipienda funt cum effectu) the said Words of the Act should be construed of Arearages which were due before: And as to (6) Mo. 330, 340 the faid Exceptions it was refolv'd, That a Feme (b) Covert could not make an Executor without the Affent of her Hufh. and the (c) Administration of her Goods of Right belongs to the Husband, and the Statute in naming the Woman (Wife) intended only to defign and describe the Condition of the Woman, and not to imply that the Arrearages should

eftament 10. Br. Executors 98. Firz. Executor 28. (e) 1 Roll. 910, 912. Dyer 251. pl. 90. 1 Jones Cr. Car-106. Mo. 871. 1 Leon. 216. 29 Car. 2. cap. 3. 1 Mod. Rep. 231. 1 Sid. 409. Hob. 3. Palm.

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### Mich. 29 & 30 Eliz. Regina. In the King's-Bench.

### RAWLYNS's Cafe.

Between Rawlyns and Somerford the Case in Effect as it 4 Leon. 116 was found upon special Verdict upon Not guilty plead- Goulds. 89,93,90 ed in Ejettione sirme, for an House called the Ship 3Keb. 500, 505, without Temple-Bar, was fuch ; Peter Cartwright being poffef- 10 Co. 51. 2 fed of the said House for 30 Years, of all in Possession, exaffign'd all his Interest to Rawlyns; and afterwards Cartwright Olives. 10 Bac. by Deed indented demised the said Stable to Warlow, for six Years after the faid two Years ended: And afterwards Rawlyns by Deed indented in Confideration of 25 1. Fine to be paid, redemised all the House to Cartwright for 21 Years, rendring to him 24 l. per annum quarterly, and 5 l. quarterly at the same Feasts until the said 25 l. were paid; upon Condition, that if the faid Sum of 25 1. or the faid Rent was arrear at any Feast, Oc. that then it should be lawful for Rawlyns to. re-enter; and upon the Back of the faid Indenture of Redemile was endorsed in this Manner, Memorand' It was agreed between the Parties before the Sealing and Delivery thereof, That Warlow shall have the said Stable according to the said Demise to him made. And afterwards and before any Day of Payment, Cartwright redemised the said Stable, which then was in Possession of Warlow by Force or Colour of the Lease for fix Years made to Warlow, to the faid Rawlyns for ten Years; and afterwards the Rent was arrear and lawfully demanded, and also the 51. Parcel of the Sum in gross was al-10 not paid; and Rawlyns never entred into the Stable, but Warlow always continu'd in Possession of it, and Warlow never attorn'd to any of the Lessees; and if the Entry of Rewlyns for the Condition broke was lawful or not was the Quest. And after many Arguments at the Bar and Bench, now in this Term it was adjudged, That the Entry of Raw. for the Condit. H 4 broke.

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broke was lawful. And in this Case seven Points were resolved by Sir Chistopher Wray Chief Justice, Sir T. Game and the whole Court. 1. Whereas the Verdict was entred Terms past, and in the Entry thereof in the Roll the faid Demile made by Cartwright to Warlow was not entred to be made by Deed indented, and now in this Term it was prayed to be amended; and because the Note of the special Verdict which the Jury exhibited to the Court, and which remained with Master George Kemp Secondary to Mafter Roper, purported that the Jury found the said Demise, prout, &c. by which it appeared to the Court, that the Demise was given in Evidence, and Reference made by the Note to it; it was therefore held by the whole Court, that (a) Noy 118, 119. the Record in this Point shou'd be (a) amended; and so Palm. 260. senk. Was it done in like Manner in Accompt between Gomersal 162. b. Co. Lit. and Gomersal in this very Court within 2 Years before, was it done in like Manner in Accompt between Gomersal and Gomerfal in this very Court within 2 Years before. 2. Altho' the Condition confifted of two Parts in the (b) Disjunctive, s. either for Non-payment of the Rent, or of the Sum in Gross which as to that was collateral; yet if it had been found that Cartwright had redemised any Partof the House to Rawlyns, and that Rawlyns had entred, by which the Rent was suspended, that thereby the whole Condition, as well as to the faid collateral Sum, as to the faid Rent was suspended. For it was resolved, altho' the Condition comprehended two several Things in the Disjunctive of two several Natures; The one, the Rent (c) issuing out of the Land which is incident to the Reversion, and may be fuspended by the Intermedling with the Land; The other, Matter (d) collateral to the Land, which cannot be suspended by the said Redemise, yet here are not several Conditions, but one intire Condition which refers to two several Branches, and therefore suspended in Part is suspended in the whole; and that the Condition was intire appears by the Conclusion of it, s. for the Non-payment of the one or the other, it should be lawful for the Lessor to re-enter into the whole Land, so that there is but one intire Condition, and one intire Entry, which is not by the Act of the Parties to be apportioned or divided, and because this Point was of late, f. Pasch. 27 Eliz. Rot. 185. between (e) Brightman and Somerford in this very Cafe (altho' between other Parties) upon grave Advice adjudged by Sir Ed. Anderson, and his Companions Justices of the Court of C. B. Sir Christopher Wray, and the Court of King's Bench would not suffer this Point to be argued again, but agreed with the faid Court of Common Pleas in the Point adjudged. 3. That if Cartwright had redemised any Part of the House to Raw'yns, and Rawlyns never entred into it, yet

the Rent by the Acceptance of the Redemise before any

Entry, is (f) suspended; so that the Non-entry of Rawlyns

makes no Difference between this Case, and the Case which

was in the Common Pleas; for when the Leffor accepts a

(e) Jenk. Cent.

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260. 2. 2 Leon. 194. Salk. 53. (6) 5 Co. 22. 2. 2 Rolls 450.

(d) Jenk. Cent.

(c) Owen 41. 3 Leon, 221.

(f) Co. Lit. 148. 2. b. Cr. IT. IOI. Ventr. 27.0

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lemife, and fuffers a Stranger to occupy the Part redepends the Rent, as well as if he himself had entred. 4. That the said Lease made by Cartwright to We low by Indenture when he (a) had nothing in the House, (a) Cr. Car. and Heal 82, lenk. was notwithstanding good against him by Conclusion; and Cent. 354. hen Rawlyns redemised the whole to him, then was his Interest bound with this Condusion, and then when Cartwright redemified the faid Stable to Rawlyns, now was Rawlyns concluded also. For all Parties and Privies in Estate or Interest are bound by Estoppels, and then the Case is no other; but Carrwright demises to Warlow for fix Years the faid Stable, and afterwards demises to Rawlins for 20 Years, so that this is a good Lease in Reversion for 14 Years, this doth not make any Suspension of the Rent, or Condition, for it is not any Grant of the Reversion, but a future Interest in Reversion, no Term but an Interest of a Term as the Pleading is; And notwithstanding such Grant, the Reversion (without Attornment) remains in the Grantor, and he shall have the Rent reserved upon the first Lease: But if there be Attornment, then the Reversion passes, and then will follow Suspension: And therefore it was agreed, it a Man (b) makes a Lease for 21 Years rendring Rent, (b) 1 Rolls 939. with Clause of Re-entry, and afterwards the Lessee makes a Leafe to the Lessor for fix Years to begin two Years after, and afterwards the Rent being lawfully demanded, is Arrear, the Lessor may lawfully enter and take Advantage of the Condition, notwithstanding the Acceptance of the faid future Interest, and by the Entry defeat the future Interest which was vested in him: If a Man makes a Feostment in Fee upon a (r) collateral Condition, and afterwards the (c) 1 Rolls 930 Feoffee redemises the Land to the Feoffor, and afterwards Cent.254. 3 Keb. the Condition is performed; now the Redemise of the Land 505. 1 Co. 174. 2 Brownl. 228. being no Suspension of the Condition, is no Impediment but that the Feoffor shall take Advantage of it, and thereby dethoy the Term which he himself has accepted, as it is held in 20 F. 4. 19. a. 8 H. 7.8. 20 H. 7. 4. So in the Case at
Bar, the Redemise in future makes no Suspension of the Rent, Cr. Car. 110.Co and per consequent no Suspension of the Condition. 5. Al-Lit. 227. 2.352.2 tho' it was objected, 1. That (d) Estoppels conclude the Cr. El. 36, 37, 40, 309. Jenk. Parties to say the Truth, but can't conclude the Jurors be-Cent. 254. 2 Co cause they are sworn ad veritatem de & super pramissis di-11con. 206. in Pleading the Party ought in the Conclusion of his Plea Cart. 155. Palm. to (e) rely upon the Estoppel, and not demand Judgment 20. Hard. 483. if Action, or make other Conclusion, as it is held in 22 H. 6. Herl. 83. Moor 33. and for these Reasons the Court shall not give Regard to 96. Lit. Rep this Estoppel by Deed indented found by the Jurors: Yet it 271, 273. Larch.
was resolved in this Case, That this Estoppel being found by (6) 2 Jones 8.
Verding about 10 Life 227, 2. Verdict, the Court ought to judge upon the whole special Mat. Hob. 207. 11 Co. cording to Law: And true it is, that the Jurors are fworn ad 52. a. Doc. pl. ver it die; and theref. they've well done in the Case at Bar to

Sturgen or Wingfield 15 Ma W. 224.

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(a) Moor 96. El. 36, 37, 140, 309. Lit. Rep. 371, 383.

find the whole Truth of the Cafe, and leave the Judgment of it to the Court, which upon the whole Matter ought to judge according to Law. And Wray C. J. faid, That it was adjudged in (a) Pleadal's Cafe, in 8. Eliz. that be-Licon 15% Co. cause a Jury did not find such Lease by Deed indented Lit. 227. 2. Cr. which took its Operation only by Conclusion, intending that they being fworn ad verifatem dicendam, and that E. stoppels conclude the Parties, but not the Jurors to fay the Truth, were therefore attainted and had Judgment accord. ingly; for the Justices in the same Case held, That the Interest of the Land as to Parties and Privies was in a Manner by such Conclusion bound, and no Conclusion shall be by such Deed indented after the Term ended, as Wray C. J. held, and in fuch Case the Jury ought, if they will not find the special Matter, and leaveit to the Judgment of the Law, to find at their Peril according to Law. Vide for this Point, 17 E. 3. 6. 18 Ass. 2. 22 Ass. 37. 34 E. 3. Droit 29. 15 E. 3. Assis 322. 13 E. 3. Garr. 26. 35 Ass. 8. 1 H. 4. 6. b. 27 H. 8. 22. Plow. Com. 515. and many other Books. And upon good Consideration of this Judgment and the faid Books, you shall understand and observe good Differences, and which Opinions in the Books are according to Law, and which not. 6. It was refolved that if a Man has Land for 20 Years, and he leafes for two Years rendring Rent, and afterwards grants his whole Term and Interest to another, if the Lessee attorns, the Reversion shall pass; and if no Attornment is had, yet the Interest in Reversion shall pass, so that the Grantee shall have the Land after the two Years determined; For the Grant of one shall not be adjudged void, if to (b) any Intent it may take Effect. 7. It was resolv'd if Lessee of an House for 20 Years, leafes Part for 2 Years, and afterwards leafes the whole to another for 10 Years rendring Rent, so that this enures as a Lease in Reversion for the Part in Lease, and a Lease in Possession for the Residue, that the Rent shall issue out of the whole, and the Interest of the Term, altho' it is not any Estate which can be surrender'd, and altho' it is joyned with Land in Possession, yet the Rent shall issue out of the whole: Upon which Judgment Somerford brought a Writ of Error upon the new Stat. upon the Judgment and 2 Errors were affigned. 1. Because Rawlyns the Pl. was an (c) Infant, Lit. Rep. 60. and was admitted by Guardian C. B. but only recited in the Court; J. B. Hetl. 52. I Jones made as is used in C. B. but only recited in the Court; J. B. Cr. El. 424. 541. lins per A. B. gard' fuum ad hoc per Cur' specialiter admif, que Palm. 295. ritur, &c. The 2 Error was assigned in the Judgment it self girle. R. R. As to the I Error the Judges Anderson C. J. C. B. Manwood Chief Baron of the Exchequer, Periam Windham, and Rhodes Justices, Clark and Gent Barons of the Exchequer,

and of the Coif, order'd the Presidents B. R. be search'd, for

without Presidents, prima facie it seemed to them, That there ought to be a Record made of the said Admittance

by Guardian; and on Search of the Records in B.R. many

(6) Lit. Rep.

(e) 1 Siderf. 173.

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were found and shewed to the Justices, where (a) Infants had (a) 1 siders 173. fued by Guardians in the same Court, and no Record made Lit. Rep. 60.
of their Admittance by Guardian, but such Recital in the 177. Hutt. 92.
Court as aforesaid: The Justices and Barons una voce in Palm. 295. Regard of the Prefidents which in this Case make a Law in the same Court disallowed the Error, altho' Presidents in minuto numero were shewed, where Record was made of the like Admittance of an Infant in the King's Bench, as is done in the Common Pleas. As to the Error in the Judgment, all the said Points often argued in the King's Bench, and upon great Deliberation adjudged, were again argued before the faid Justices and Barons of the Exchequer; and after many Arguments at the Bar and Bench, all the Matters before refolv'd were from Point to Point, and for the Reasons before alledged, affirmed by all the said Justices, and Judgment given accordingly. Ed. Coke and others were of Council with the Plaintiff, and Glanvill Serjeant and others with the Defendant. And this was the last Case that Sir Thomas Gawdy argued, who was a most reverend Judge and Sage of the Law, of ready and profound Judgment, and of venerable Gravity, Prudence, and Integrity.

Note Reader, according to the Opinion of Wray Chief London's Cafe. Justice, it was afterwards adjudged in the Common Pleas, Moor 181.

Pasch. 33 Regina Eliz. in the Case of one London, That if I Rolls 871,877.

a Man takes a Lease for Years by Deed indented of his own Rep. Co. Land, it is no Conclusion but during the Term, and after Lit. 47. b. Cr. the End of the Term the Lessor may enter or occupy the Cent. 254.

Land, for by the Determination of the Term, the Eston.

Land, for by the Determination of the Term, the Estoppel is also determined, and then both the Parts of the Indenture belong to the Lessor, as it is held 38 H. 6. 24. And so the Law is now resolved in a Case which was much controverted in our Books, 14 H. 6. 23. 8 H. 4. 58. 3 E. 4. 14. 8 H. 6. 17. 44 E. 3. Estoppel 10. 43 E. 3. 17. 21 H. 6. 2.

14. 8 H. 6. 17. 44 E. 3. Estoppel 10. 43 E. 3. 17. 21 H. 6. 2. 43 E. 3. Estoppel 7. 3 H. 4. 6. 12 H. 4. 19. Litt. 156. 47 Ast. 3. 35 Ast. 8. 10 E. 3. Double Plea 8. The Opinion

of Hales and Montague in Pl. Com.

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# Trin. 30 Eliz. in Cancellar'. Monstrans de Droit by the Wardens and Com-

minalty of Sadlers in London in the Chancers.

z Anderf. 180, 181. Co. Ent. 402. pl. 1. 9 Co. 15. b. 96. 2.

Y Virtue of a Writ of Mandamus after the Death of Thomas Cox, it was found by Enquest before Wolffan Dixy Mayor of London Escheator of the said City 17 Junii, anno 28 Eliz. and returned in the Chancery, That the said Tho. Cox die obitus sui was seised in his Demesne asof Fee of 11 Messuages and 8 Gardens in the Parish of All-Saints in London, and died without Heir, and that they were held of the Q. in Socage: And the Wardens and Comminalty of Sadlers in the Chancery shewed their (a) Right, That long Time before the faid Tho. Cox had any Thing in the faid Messuages and Gardens, one Richard Mylard was feifed of them in his Demesne as of Fee. And so seised 6 die Aug. anno 15 H.8. by his Will in Writing devised the said Messuages and Gardens to the Wardens and Comminalty of Sadlers in Fee, and died; and that they were feifed 'till by the faid Tho. diffeifed, who fo feiled died without Heir: And shewed the Cust. of Lond. That a Citizen (b) and Freeman may devise in Mortmain; and a. ver'd that the faid R. Mylard was a Cit. and Freem. of Lond. at the time of his Death: Upon this Plea the Attorney-General demurd in Law; and if a Monftrans de droit in this Cafe lay, or they thou'd be put to their Petition was the great Question of the Case: And this Case on the Q's Part, and on the Parts of the Wardens and Comminalty was often argued as well in Can' as before all the Justices of Eng. and Barons of the Exchequer at Serg. Inn in Fleeift. And in this Cafe div. Points were refolv'd.

(6) 2 Balftr. 191.

1 Rolls 556.

(a) 1 Anders. 180, 181. 1 Co. 173. 2 Rolls Rep

> Is by Matter of Record, which is either

1. By Record judicial, as Attainder, Oc.

2. Ministerial on Oath, as Office.

3. Or by Conveyance of Record by Assent as Fine, Deed inroll'd, &c.

As Alienation in Mortmain,
Purchase by Alien born, the
K's Villain, Escheat by Death
without Heir, &c. and this
found by Record Ministerial,
as before the Escheator or other Officer.

When Land comes to the King by Escheator other Matter of Fact, and the King's Officers put it in Charge in the Exchequer without Office.

Case where the King is intitul'd to any Free-hold or Inheritance, this Title

Or by Matter in Fact, and found by Office of Record on Oath,

Or by Matter in Fact 7.

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And it was resolved that in all these Cases at the Common Law, when the King was feifed of any Estate of Inheritance or Freehold by any Matter of Record, be his Title by Matter of Record Judicial or Ministerial, or by Conveyance of Record, or by Matter in Fact, and found by Office of Record, he who has Right could not by the Common Law have any Traverse upon which he was to have Amoveas manum, but was put to his Petition of Right (in 2 Cro. 186. Nature of his real Action which he could not have againft : Rol. Rep. 95. the King, because the King by his Writ can't command himfelf) to be restored to his Freehold, and Inheritance, 4 H. 6. 12. 24 E. 3. 23. 1 H. 7. 3. 4 E. 4. 21. b. 9 E. 4. 52. But at the Common Law the Party grieved might in some Case have his Monstrans de droit where the King was so entituled, and in some Case not, when the King's Title was by Matter in Fact, as by Reason of Purchase by an Alien born, or the King's Villain, or for Alienation in Mortmain, or by Death of the King's Tenant without Heir, &c. in all these and the like Cases, if Office be found for the King, and in the same Office the Title or Interest of the Party be found, there the Party grieved might at the Common Law have his Monstrans de droit, because his Title appears by the same Record, whereby the King is intitul'd; as if a Diffeifor aliens in Mortmain, or to an Alien born, or to the King's Villain, or dies without Heir, the Land being held of the K. and all the special Matter is found by Office, s. the Disseifin and the Alienation, or the Death without Heir, in all these Cases the Party griev'd should have Monstrans de Droit at Common Law; And so are the Books to be intended in 9 E. 4. 51. & 13 E. 4. 8. a. 4 E. 4. 21. 33 E. 3. Traverse 36. It was found by Office that T. by Licence of the King did marry the King's Neif, and that certain Lands descended to the same Neif, which her Husb. aliened without the K's Licence (his Wife being the K's Neif) to another, and for this Cause the Land was seised; whereupon the Alienee came into the Chancery and shewed all his Case which was found by the Office, and because the whole Truth of the Case, s. The K's Neif, married by his Licence; 2. The Descent to the Neif after the Coverture appeared in the Office; it was awarded, That for this Cause the Husb. might hold by the (a) Cour-(a) 1 Leon. 47. tene, and by his Alienation put the Wife to her Action, co. and thereupon by Award the Alienee had Restitution: By Goldsb. 29. which Case it appears; first that the Woman being married by the K's Licence, is enfranched (b) at least during the Co-30.b. 136.b. verture, for if she should remain Neif, then the Husb. should 137.b. Doct. & not be Tenant by the Curtesie; for when the K's Title, and Stud. 140. 2. the Title of a Subject concur in the Beginning, the K's Title shall be (c) preferred, as Weston holds Plow. Com. 263. b. 2. 9 Co. 129. b. That when the whole Truth of the Case appears in the Hard 24. Office, that there was Monstrance de droit at the Common Law: So if Land was conveyed to the King upon Condition, if the Performance of the Condition be of Record,

# The Case of the Wardens, and PARTIV as if the Condition be to levy a Fine of other Land to the

King, or to make a Recognisance to the King in any Court of Record, or other like Conditions which are to be perform. ed of Record; he who has performed the Condition may have his Monstrans de droit at the Common Law, for his Title appears of Record, and there is no Record which absolutely entitles the King : But if the Performance of the Condition be not on Record, then if the Performance of the Condition be found by Office, he shall have Monstrans de droit by the Common Law, vide Plow. Com. 229. But in the fame Case if the Office finds only Title for the King, and omits the Right or Title of the Party, altho' all the Words of the Office are true, yet by the Common Law he can't have Monstrans de droit, but for the Reason aforesaid he was put to his Petition, and therewith agrees Piers Partifield's Cafe in 29 All. p. 31. it was found by Force of a Writ of Diem clauft extremum, that one held certain Lands of the K. in Lond. and died feifed without Heir, wherefore the K. gave the Lands by his Letters Patents to Piers Partifield for his Life, who fued a Writ to the Mayor of London to put him in Seisin, and thereupon nothing was done, for which Cause he sued Sicut alias, vel Causam nobis fignifices, upon which Writ the Mayor returned, That the K's same Tenant by his Will in Writing and enrolled before the Mayor devised the Land to his Wife for Life, and that she or her Executors should sell the Reversion for his Soul, and that the Wife and John Digle her now Husband were in by the said Devise, wherefore he could not make Livery; and afterwards P. Partifield by Force of the K's Patent entred, whereupon John Digle and his Wife fued a Scire facias against Piers P. if he could fay any Thing wherefore they should not be reflored: Piers P. demanded Judgment of the Writ for 2 Reafons. First, Because he held but for Life, the Reversion to the King, in which Case Suit thould be made against the K. 2. Since an Office was found for the K. he shou'd not have this Suit before that upon his Petition an Office is found as it ought to be intended for him, and so before he is admitted to shew his Right, he ought to have his Right as well found by Office, as the K's Title was found by Office, for that is aquale jus: To which it was answered: 1. That fince they were seised of the Freehold, that they were not to be oused without Suit. 2. That against the King Petition could not be fued, because Piers was Tenant of the Freehold: 3. That this Matter returned by the Mayor, &c. shou'd serve for an Office, for by the Office the Reverse of her Matter was not found; which is as much as to fay, That the whole Matter found by the Office was true, scil. that the Tenant held the Land of the K. and died without Heir, and by the faid

Devise it was confess'd and avoided. And to decide these Quelly

3 Rolls 315. Hard. 13.

Br. Livery, &c. 42. Br. Office Antes, &c. 19.

PART IV. Comminalty of Sadlers.

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hole nant faid ueste . 2 all the Justices of England were assembled in the Chancery; And by the Award of all the Justices the Writ was abared, because no Office was found for John Digle and his Wife, and they were directed to fue to the K. (J. by Petition) for an Office which might ferve them. Out of which Award of all the Justices I observe these Things: First that at Common Law when by Office the K. was seised of an Estate of Freehold, altho' all the Points of the Office were true, the Party grieved was put to his Petition in Nature of his real Action, unless his Title was found by the Office. 2. That a Petition lies to the K. altho' he has departed with the Freehold. 3. That forasmuch as the K's Title is found by Enquest of Office upon Oath, the Title of the Subject ought to appear by Record of as high Nature, f. by like Enquest of Office upon Oath, and not by the Return of the Mayor, which altho' it is of Record, yet it is not of so high and great Regard in Law as the Office found by Oath: So Nota, Judicial Records as Attainders and Judgments are preferred before Ministerial Records, as Inquisitions, and Offices before Escheators, and they also being found in Course of lawful Proceeding by Oath before Retorns, or Conveyan-Stamf prer 83. b. Br. Office ces of Record, as hereafter more fully appears to you in this Antea 21. Br. Case. And in 30 Ass. pl. 28. by Diem clausit extremum it was reseise pro Refound, that J. held of the K. and that M. was his Daughter fac' 220. Co. and Heir who was of full Age and had Livery; And by a-Lit. 77. b. poftes 56. b. nother Office it was found, that the same J. had another Daughter K. who was yet within Age, by which a Scire facias issued against the said M. and her Husband, Oc. who said, That the Land was given to J. and to his first Wife Mother of M in Tail, and that K. was the Issue of another Wife, and so M. sole Heir. But by Award of the whole Council (1. the Justices, who are as to Administration of Just. called in Law the Council) all the Land was feifed into the K's Hands, because the Tail was not found by any Office, but Co. Lit. 77. b. only that M. was general Heir; So at Common Law, if the King by false Office was possessed of the Custody or Interest in any Land by Reason of Ward, or Ideocy, or Alienation without Licence, or the like, in such Cases altho' the King was not entituled to a Freehold, but to a Chattel real, and by false Office only, yet the Party grieved could not have a Travers, and thereupon to have Amov manum, but was put to his Petition by the Com. Law; and therewith agrees the Book in 17 E. 3. 11.a.b. But yet as well a Travers as a Monfir' de droit was at the Com. Law, as well concerning Freeh. and Inheritance as Chattels real, for in all Cases when by the Office Land is not in the K's Hands, nor the K.

The Case of the Wardens, and PART VI thereby in Possession, but the K. by the Office is only en-

(a) Kelw. 32. a. b. 200. b. 9 Co. 96. b. Stamf. prær. 55. a. b. 3 Co. 11. 20

(6) Br. Scire fac' 132. Stamf.prær. Br. travers de

(f) Kelw. 178. pl. 11. 4 E. 4. 21. b. Br. Peri-tion 28. Br. Tra-verse 33. Fitz. Traverse 5. Cro. 523. Moor 659.

tituled to an Action, and can't make a Seifure without Suit. there in a Scire facias brought by the K. in the Nature of fuch Action to which he is entituled, the Party may upon the faid Scire facias appear, and traverse the Office at the Common Law, for the Party is in Possession, and upon the Matter found for him shall not have any Amoveas manum, because by the Office nothing was in the K's Hands, but the K. shall be barred of his Action. And therefore if it is found by Office that the King's Tenant has (a) ceased for two Years; or that the K's Tenant for Life, or Years has committed Wast, or that his Tenant by Knight's Service has made a Feoffment by Collusion, in these Cases the King is put to his Scire facias against the Tenant, and in all these Cases the Tenant in the Scire facias might traverse the Ceffer, Wast, and Collusion at the Common Law, and therewith agree the Books in 14 (b) H. 7. 23. a. & 25. a. (c) 15 H. 7. 6. b. & 12 H. 7. 21. b. it appears also by a Book (c) Stamf. prær. before any Statute made which gives Travers, or Monstrans 55. b. 9 Co. de droit, (d) 30 Ass. 28. 32 E. 3. Scire facias 106. 32 E. 3. (d) Stamf. prær. Travers 38 (e) 50 Ass. 2. It was found by Office that W. the 33.b. Aneca 56.2. Tenant in Capite died, and that the Tenancy descendpro Rege 25. Br. ed to R. his Son and Heir who is a Fool and Ideot from Scire fac 220. his Birth, and that N. was Terre-Tenant, against who is a Br. Alienat, Scire facias issued, if he could be some facial and the series of th should not be feifed into the King's Hands, who came and pleaded that this R. after the Death of W. released to one F. Office 22. Br. pleaded that this K. after the Death of W. released to one K.
Office devant 24 then Tenant, all the Right, &c. who enfeoffed him, at
Pofice 126. b. which Time P. was of good Memory and traversed the Point Feofiment de which Time R. was of good Memory; and traversed the Point of the Office, scil. without that, that Richard was a Fool from his Birth, for it would be in vain to award a Scire facial to know if he can fay any Thing, Oc. and when he comes that he shou'd plead nothing: But if the Office finds no other in Poffession but the Ideot, thereby the K. is in Possession, then he who in Truth was Terre-Tenant and is ousted by the Office, can't traverse the Office to have Amove as manum, because it doth not appear by the Office, that he was Tenant at the Time of the Office, but is put to his Petition : But forasmuch as in Case when the K. was in Possession by the Office, or might seise without Suit, there the Party was put to his Petition, which Suit was tedious, and of great Delay and Charges to the Party grieved, for his Relief was the Stat. of (f) 34 E. 3. cap. 14. made, by which it is enacted, That where Lands or Tenements are seised into the K's Hands by Office of the Escheator, containing that the K's Tenant made thereof Alienation without the K's Licence, C.C. Out of which Words divers things are to be observ. I. where it is said, where Lands or Tenem. are seised into the K's Hands, &c. it thereby appears that the Mischief was, where the Lands or Tenem. were seised into the K's Hands by the Office, for it was not any Mischief as has been said, where the K. was entit. but to the Action, for there was traverse at the Com. Law. 2. That this Act ex-

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only where the King was entitled by Office only, for the Words are feifed into the King's Hands by Office of the Efcheator. 3. That this Act extends only to the Case of Alienation without Licence, and to the Cafe of Ward. But three Things were grievous to the People which were not kelw. 178. remedied by this Act. 1. That no Office was within the 3 Cr. 523. Purview of this Act, but only Office found virtue brevis, or commissionis; for the Words are (taken by the King's Commandment) fo that an Office found virtute officit, was out of this Act. 2. That the faid Act as appears before, extends only to the faid two Cases of Alienation without Licence and Ward. 3. That the faid Act extends to a Traverse only, and not to Monfirans de droit, by which altho on the Traverse the Issue was found for the Plaintiff, yet the Judges could not proceed to Judgment without a Writ de Procedendo ad judic, which were great and grievous Mischiels; for Remedy of which another Statute was made anno 36 E. 3. cap. 13. for the grievous Complaints which the King had heard from his People of his Escheators, &c. He willed and ordained. with the Assent aforesaid, That Lands seised into the King's Hands for Cause of Ward, be safely kept without Wast, &c. So of other Lands seised into the King's Hands by Enquest of Office taken before Escheators, which Words are general. 1. As to the Matter, for they are not restrain'd to the two Things, J. Alienation without Licence, and Ward mention'd in the former Act. 2. As to the Office, for they extend as well to Offices found virtule brevis, five commissionis, to which only the former Act extended, as to Offices found virtute offien. And as to the great Objection which was made, that forasmuch as the Words of the Act are, that the Escheator shall send the Enquest into the Chancery, within the Month, or, that it ought to be intended of an Office found virinte brevis, five commissionis, because no Office found before the Escheator virtute officii, could by the Law be return'd into the Chancery, but only into the Exchequer, as it is faid in 4 E. 4. 24. a. & Stamf. Prarog. 70. b. To that it was answer'd and refolv'd upon shewing of infinite Precedents in all Ages, that such Offices had been seturn'd by the Escheator as well into the Chancery, (a) as into the Exchequer, and (a) r Co. 42. b. the Escheator had Election to return it into which of the 4 Inst. 225. Courts he would, for he is attendant to both Courts, and Kelw. 173. 2. Ley de Gards 8. both are the King's Courts; Then the Statute goes fur Liveries 25. ther, and be heard without Delay to traverse the Office (which Words as to the Matter and Manner of the Office, (6) Hard 1417 are general, so that by these Branches, the two first of the said Defects were remedied) or otherwise to shew his Right, Ge. By which the Monff' de druit was given to make a final Discussion without attending other Commandment, by which Words they shall proceed to Judgment without any Protedendo; and so all the faid Mischiels were remedied. But it was refolved, that this Act doth not extend to any Judicial Record, as Attainder, or Recovery, but only when

The Case of the Wardens, and PART IV. nothing appears of Record for the King but only the Office: and therein the Makers of the Act had great Reason, for in Cafe of Attainder and Office, the King is entitled by (a) double Matter of Record, wherefore the Party griev'd ought to avoid it by double Matter of Record, and not by fingle Traverse, or Monstrans de droit; for it was said, Nihil tam (b) 5 Co. 28. 2. (b) conveniens est naturali aquitati, unumquodq; dissolvi co ligami.

1 Brownl. 191. ne quo ligatum est, and therefore he shall be put to his Petition,

2 Co. 43. b. upon which he shall have an Office found containing his Ti
2 Inst. 359, 573, the of Record, which is required by the Justice of the Law,

Dav. 33. b. because the King's Title commences by Record, and there-(b) conveniens est naturali aquitati unumquodq; disolvi co ligamibecause the King's Title commences by Record, and there upon the Party grieved shall traverse the King's Title found by the Office, or thew his Right and confess and avoid it : and if upon the Traverse, or Monff' de droit' it is found for him, or the K's Attorney confesses it, then he shall have Amov' man'. for he has answer'd and fatisfied double Matter of Record with

was, when the King is in by Force of a Title by Judicial

Lane 58.

(a) Hard. 81.

FirzPetit.17. double Matter of Record ; Vide 11 H. 4. 52. b. Another Reason Br. Petit. 10. Br. Noniuit 12.

( ) Br. Office; Antta 23.

Matter of Record, as by Attainder or Recovery, there for the Estimation and Credit which the Law gives to Judicial Records, the Party is put to his Petition: These Resolutions of the Justices in this Case agree with our Books, (d) 36 E.3.c.12. I. That the Statute of (d) 36 E. 3. extends to other Cafes, than to the Case of Alienation without Licence and Ward, which are mention'd in the Act of (e) 34 E. 3. there are dis Kelw. 178.pl. 11. vers Cases agreed in our Books; and therefore 43 Aff. 28. it was found by Office return'd into Chancery, that one W. of (f) Herlington, who was feifed of certain Lands in the County of York, was aiding to Guilbert de M. who was the Kings Enemy, whereby the Lands were feifed into the King's Hands and thereupon came W. into Chancery, and travers'd the Office, and it was found for him, and he had Restitution by Judgment of the Court, which special Case is not mentioned in the Act of 34 E. 3. but is included within the general Words of 36 E. 3. Cave Lector, for at this Day altho's Man is aiding to the King's Enemies, or is kill'd in open Rebellion against the King, he shall not (g) forseit his (s) 1 Inft. 12. Rebellion against the King, ne mail not (g) to the Kings Hales 17. 1 Inst. Lands nor his Goods; but if the Chief Justice of the Kings 170. 22 Rich. 2. Lands nor his Goods; but if the Chief Justice of the Kings 170. 22 Rich. 2. Bench (who is supream (h) Coroner of all England) in Personal Scams. Cor. son upon the View of the Body of him kill'd in open Research of it and returns it into the Kings bellion, makes a Record of it and returns it into the Kings 22 Rich. 2. Bench, he shall forfeit his Lands and Goods, as it was done Cott. Records 381 and refolv'd in the Time of H. 7. by Fineux C. J. Vide 8 E.3.
(6) 4 Inft. 73.
38. 7 H. 4. 47. and in 2 H. 4. (i) 10. b. Sir Tho. Talbot's Case:

The Performance of a Prince of the Prince of the Kings. The Possessions of a Prior alien were seised into the King 2 Sid. 101.

(i) Fitz Petition Hands for certain Cause, and afterwards the King, made List. Br. Petit. 4. Hands for certain Cause, and after Livery the King by Writ of Br. Travers de of the Chancery had taken them again into his Hands by Office 5. this Word resumpsimus, and committed them to one The bury; and now came the Executors of the faid Sir Th

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mas, who had a Term for Years in the faid Possessions, and in the Chancery exhibited their Traverse, and had a Scire facias against the said Tutbury, and there Skrene for the Def. demanded Judgment of the Writ, for where the King feises for Cause, a Man may have a Traverse to the Cause, and answer to it by the Statute, meaning the said Act of 36 E. 3. for this Case of Prior Alien was not within the said Act of 24 E. 3. But where the King seises into his Hands, and determines no Caufe wherefore in certain, he ought to fue to the King-by Petition, quod fuit concessum by the Justices afsembled together for this Purpose in the Chancery. Note Reader, it thereby appears, That a Termor may have a Traverse in that Case by the Statute of 36 E. 3. But it was objected, that neither the Statute of 34 (a) E. 3. nor the (a) 34 E. 3. c. 14 Stat. of 36 (b) E. 3. extended to the Case at Bar, because in (b) 36 E 3. case this Case the King was intitled to the Freehold and Inheritance, and the said Acts give Remedy only when the King is entitled to a Chattel, as Ward or Alienation without Licence, Jc. To which it was answer'd and resol. That the Act of 36 E. 3. extends generally to Lands seised, &c. by Office, which is a beneficial Law made in Advancement and for Execution of Justice and Right without grievous and redious Delay, and therefore shall be taken as generally according to the Letter and Intent of the Act, and with this Resolution in this Point agree the Books 13 E. (e) 4. 8. a. 4 E. 4. (c) Br. Trivers 22. b. Lord Hungerford's Cafe, 3 H. 7. 20. Ld. Greiftock's Cafe, Firz Trav. 9 49 E. 3. 16. a. b. Ifabel (d) Goodcheap's Cafe, & 10 R. 2. Tra- (d) 2 Co. 53.2.b. vers 37. and fo the Quare in Stamf. Prarog' 61. well refolv'd; Lit. Rep. 133. and the Book in 8 H. 5. Travers 47. is to be intended at the Godb. 4432 Common Law before the faid Act: It was also resolved, that Br. Escheat 322 when the King's Tenant seised of Lands in Fee dies with Br. Devise 100 out Heir, that the Fee (e) and Freehold is immediately af Plowd. 259. 22 ter his Death and before Office found thereof cast upon the Raym. 83King; for in such Case it ought to be in some Person, and Swind. 33if any Person enters into the Land and takes any of the Pro
2 Roll. Repastra
fits, an Information of Intrusion for the King may be pre
(e) 3 Co. 10. b.
ferred against him before Office or Seisure; for the K. imme
plowd. 229 b.
dirtely by the Death is in actual Possession, and has not only a Rola Repastra
a Freehold in Law, as a common Person in such Case has; Cr. Car. 173and as to that, this Difference was taken and agreed; when a lones 74and as to that, this Difference was taken and agreed; when I lones 71. the King's Tenant dies in Possession without Heir, so that in 3 Hi 72.2. such Case possession est vacua, and in nobody, there the Law will Br. Office Antes adjudge the K. (in whom no Laches shall be reckon'd) in acturate rogative 91. al Posses immediately; but when anoth, is in Seisin and Posses. Br. Esch. 25, 33. at the Time of the Escheat, so that posses plena est (f) on non Hard. 14. and Posses. is remov. as if the K's Ten. is (2) disseised and dies (4) Hard. 14. without Heir; or if an Alien born, or the K's Villain, or the Alienee in Mortm.is disseif, and all this is found by Office in these Cases the K. shall not be in Posses. 'till the Posses, and Seisin of

the Terre-tenant is removed; but if Land descends to the K.

The Case of the Wardens, and PART IV.

after the Death of his Father, or any other collateral Ance-

ftor, the K. shall be immediately in Possession before Entry or Seisure: So if the K. makes a Lease for Life, or a Gift in Tail, and the Lessee dies, or the Donee dies without Issue, in this Case the Possession thall be actually in the K. without any Entry or Seisure, and therewith agrees (a) 9 H. 7. 2. b. and (a) 3 Co. 10. b. there it is expresly said, That when no Man is in Possession, it shall be adjudg'd in the K. according to his Title; and so 34.Br. Prærog.91. Br. Efch. 25, 33. Plowd. 229. b. the Doubt which Stamf. makes Prarog. 53. b. well refolv'd: But it was hereupon strongly urg'd by one of the Justices, that Moor 393. in the principal Case the Company of Sadlers should be put to their Petition, for inalmuch as immediately after Cox was dead without Heir, the Possession was actually in the Queen; then before Office found they were put to their Petition, for the Act of 36 E. 3. extends only in Case where an Office is found, for that is the Record traversable by the Statute; and therefore he faid, If a Diffeifor conveys the Land to the K. in that Case the Disseisee was put to his Petition by the Com. Law, and therewith agree 22 E. 3. 5. 24 E. 3. 23. 4 E. 4. 22. and that is not remedied by the faid Act; for altho' the K. is entitled by a Record, yet it is not a Record traversable bythe faid Act: So he faid, when Rich. D. of York, Father of K. E.4. disseised one and died seised, and it descended to K. Edw. 4. now the Disseisee was put to his Petition; and therefore altho' the Descent was afterwards found by Office, and altho'

> the K. was entitled by Office, and fingle Matter of Record only, yet he was put to his Petition, and was not remedied by the faid Act, as appears in 9 E. \* 4.51. b. 2. It was ob-

> jected, That the Statute of 36 E. 3. cap. 13. extends only in Case where one is put out of Possession by the Office, as Stams.

conceives Prarog. 61. a. But in this Case the Company of Sadders was not put out of Possession by the Office, but by the Diffeisin made by Cox to them, and therefore this Case was not remedied by the faid Act. But as to that it was answer'd and resolv'd, That it is a Maxim in Law, that when one common Person against another common Person is put to his real Action, in such Case he shall be put to his Petition, (b) which

is in lieu of his real Action against the K. Vide 7 H. 4. 33. 9 H. 4. 5. and therefore there is a great Difference between the Cases which have been put, and the Case at Bar; For 1. as to the faid Cafe where Land descends to the K. from his Ancestor, by this Descent the Entry of the Disseise is toll'd, it it was in the Case of a common Person, and therefore in the Case of the K. he shall be put to his Petition : But in Case of Escheat, when a Disseisor dies without Heir, if it was in the Case of a common Person the Entry of the Disfeise was not toll'd, but he might enter upon the Lord by Escheat; and altho' it should be admitted, that in the Case at Bar, the Company of Sadlers could not have their

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(b) 2 Co. 53. 2.

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Monstrans de droit before Office found, and that it should remain at the Common Law not remedied by the faid Act of 36 E. 3. yet when Office is found it has Relation to the Time of the Death of the Tenant without Heir, and now the Stat. of 36 E. 3. extends to it; and if it should be also admitted, 36 E. 3. cap. 13. That the Case when a Disseisor conveys Lands to the K. that 9 Co. 129 b. that remains not remedied by the faid Act of 36 E. 3. because there is no Record traversable by the Act in such Case, yet forasmuch as in the Case at Bar Office is found, that the Record is traverfable, the Party griev'd by the Purview of the faid Act shall have Monstrans de droit. And as to the second Objection, it was resolv'd, that the Stat. of 36 E. 3. extends to this Case, altho' the Party griev'd was not ousted by the Office, for the Words are, And if there be any Man that will make Claim or Challenge to the Lands, Oc. and that without Question the Party griev'd does, for he makes Challenge and Claim to the Lands found by the Office; and the Statute does not fay it the Party grieved be ousted by the Office: And so the Doubt which Stamford conceiv'd in this Point also well explain'd. And it was well urg'd, That the Stat. of 36 E. 3. has provided Remedy when the K. by Office is intitled to Land, either by Purchase of his Villain, or of an Alien born, or by Alienation in Mortmain, or by any fuch Title which is Matter of Fact, or in pais, and the Office is the fole Record which entitles the K. because the Makers of the Act of 2 E. 6. have provided Remedy only when the K. is entitled by double Matter Co. Lit. 77. b of Record, as Attainder of Treason, Felony, and Pramunire, and Office: And it was faid, That if Travers and Monstrans de droit had not been provided in the faid Cases of the King's Villain, Alien born, Mortmain, &c. by the former Act, without Doubt they for these Cases also would have provided Remedy, because these would be in as great Mischief if the Party griev'd should be put to his Petition, as where the K. was entitled by double Matter of Record : But it was faid, if the K. Lord, Tenant in Tail, the Remainder over in Fee, Mefn and Tenant be, and the Mesn aliens the Mesnalty in Mortmain, or to the King's Villain, or to an Alien born, and upon Of-fice thereof found the K. seises, Tenant in Tail dies, the Tenancy escheats, the Issue shall not have Travers nor Monst' de droit, for the Escheat is a Thing newly accru'd and dependant upon the Seigniory; and forafmuch as the K. had the Seigniory at the Time of the Escheat, of Necessity the Land shall escheat to him quousque, &c. and he shall be put to his Petition in fuch Cafe, Vide 8 H. 4. 9. vide Plow. Com. Wim- Plowd. 44.b. V bishe's Case. If a Tenancy escheat to a Woman who hath a Inth 365. Joynture, it is out of the Stat. of 11 H. 7. And laftly, a Judgment in the Point now lately given in the Exchequer was vouched, where the Case was, That by Office return'd into the Exchequer it was found, That Jane Wife of Theophilatt Aden

PART IV. The Case of the Wardens, and

was feised of certain Lands in Fee, and held them of the Q. and dy'd without Heir, and one Collins and Howfead came into the Exchequer, and by way of Monfirans de droit alledg'd, that one Nicholas Reynolds was seised of the said Lands in Fee, and by his Will in writing devised them to Emme his Wife in Fee and dy'd; The Wife did thereof enfeoff Collins and Howstead, by which they were seised 'till disseisfed by the faid Jane, who dy'd without Heir, and fo confessed and avoided the Office. And by the Rule of the Court, the Attorney-General answer'd thereunto, and maintain'd the Office, and traversed the Devise, which was found against the Queen, Out of which Judgment I observe, That the Barons adjudg'd the faid Act of 36 E. 3. to be taken by Equity; for the faid Act speaks only of Offices return'd into the Chanc (a) Anter 57. 2. cery, and the faid Office was return'd into the (a) Exchequer, Stamf. Przrog. which without Question was within the Intent and Meaning 70. b. 1 Co. 42. b. of the Act, Vide Stamf. Przrog. 70. And in this Case, this 4 Intl. 225.

Difference as to Petition, Travers, and Monstrans de droit was kelw. 173. 2. resolved; In all Cases at the Common Law, when the King's liveries as Title accrues to him by a Judicial Record, or as Gascoigne 9 H. 4. fays by Judgment of Record, there altho' the King grants all his Estate over, yet the Party griev'd was put to his Petition, and should have Scire facias against the Patentee, as in Case of Attainder, Recovery, &c. 44 E. 3. 22. 10 H. 6. 15. 21 H. 7. 2. 3 Mar. 139. 7 H. 4. 21. But where the K. was entitled by Conveyance of Record, as if a Disseifor convey'd the Land to the K. by Fine, Deed enroll'd, or other Matter of Record, there altho' the Party was put to his Petition against the King; yet if he granted the Land over, the Disseisee, or he who had Right, might (b) enter, or have his Action against the Patentee; for a Judicial Record is preferr'd always before a Conveyance of Record by Affent, as has been said ; vide 9 H. 4. 4. by Gascoigne the same Difference, 25 E. 3. 48. a. Plow. Comm. 553. 22 E. 3. 7. 11 H. 4.67. 7 R. 2. (c) Aide del Roy 61. by which Books, if they are well confider'd, this Difference appears. Also in all Cafes when the Party grieved might have Monfirans de droit, or traverse against the K. there if the K. granted over the Land, the Party griev'd might enter or have his Action against the Patentee, Stamf. Prarog. 75. a. vide 4 E. 4. 22. 3 Mar. Dyer

(6) Kelw. 91. pl. 17. 2 And. 113, 114.

Liveries 25.

(e) 2 Co. 53. 2. Co. Lit. 354 b.

Nota Reader, in Communi Banco inter Pemberion Communi Roll. 926.

Swints 469, 370. Pascha 32 Eliz. Rot. 235. and in the King's Bench, Hill 42

And 160. Eliz. in a Writ of Error, between Bereblocke and Read it was resolv'd, That if A. is bound in a Recognisance, or Statute Merchant, or Staple; and afterwards a Recovery is had against A. in an Action of Debt, and A. makes his Executors and dies, his Executors are bound by the Law to pay the Debt due upon the Recovery, altho' it be Puisne, before the Debt due by

Recognisance

Yelv. 29. Cr. EL 734, 735, 822. Brownl. 39,81, 12, Co. Ent. 152. Leon. 270.

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Recognizance, or Statute, because altho' both are Records, yet the Judgment in the King's Court upon judicial and ordinary Proceeding is more notorious and conspicuous, and of more high and eminent Degree than a Statute or Recogni-6 Co. 45. b. sance taken in private and by Consent of the Parties, and therefore preferr'd in Judgment of Law before Recognisance, or Statute, which agrees with the Reason of the Resolution in this Case: And I thought this Case necessary to be reported, for by this the Reader shall understand what was the Common Law before any Statute made concerning this Matter, and what Cases are remedied by the said Statutes of 34 34 E. 3. cap. 14. C 36 E. 3. and therefore you will better apprehend the true Intention and Purview of the Statute of 2 E. 6. concerning these Matters.

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# Mich. 30 & 31 ELIZABETHE, In Communi Banço.

#### Forse and Hembling's Case.

And, 181, 182, Gould, 100, 110. vinb. 439. Rolls Rep. 372 Co, 10. 2. b.

Forse brought Ejectione sirma against Hembling on a Demise made by Thomas Calie to the Plaintiff for three Years, of certain Houses in Norwich, from the Feast of S. Michael, anno 29 Eliz. &c. To which the Defendant pleaded not guilty; and the Jury gave a special Verdict, f. That one Alice Allen was seised of the said Houses in Fee, and made her Will in writing, and thereby devised, that if James Amynde surviv'd her, that then she devised and bequeath'd to him and his Heirs the Tenements in Question, and afterwards she intermarry'd with the said James Amynde; and further found, that she oftentimes after the Marriage revoked the faid Will, faying, that the faid James Amynde should not have the faid Tenements by the faid Will, and afterward the Wife dy'd feised without Issue, and the Husb. survivid, and thereof enfeoffed the Defendant, upon whom the faid Thomas Calie as Heir to the faid Alice, enter'd and made the Leafe, as in the Declaration, and pray'd the Advice of the Court. Upon which Verdict two Questions were mov'd. 1. If the Will of a Woman by the Intermarriage with the Devisee was countermanded, or not. 2. If it was not countermanded by the Intermarriage, if by her Words of Revocation after the Marriage it was countermanded. And it was objected, by the Husband's Counsel. 1. That if a Feme sole makes her. Will and devises her Land to A. and afterwards marries B. and afterwards B. dies, and the Wife survives him, in that Case it was said that the Will remains good, and was not countermanded by the Marriage, as Manwood faid in Plow. Com. 343. and was not deny'd; but if it was admitted that the Will in such Case was countermanded by the Marriage with a Stranger; yet in the Case at Bar for the Benefit of the Husb. being the Devisee, the Will shall not be

(a) Goldib. 109, counterman. and therefore it is adjudg'd in 2 (4) R. 2. Attorne o. Bria m. 83

ment 8. That where a Feme sole makes a Lease for Life rendring Rent, and afterwards by her Doed grants the Reversion to anoth. and afterwards and before Attornment, marries with the Grantee, that this Marriage was not a Countermand (4) of the Attornment, as if the had marry'd with a Stranger, (4) 1 And. 181. for it is for the Benefit of the Husband that it shall not be Goldib. 110. a Countermand, and therefore there by the Payment of the 1-Vent. 186.
Rent by the Tenant to the Husband in the Name of Attorn-Kelw. 163. 2. ment, the Reversion past out of the Wife to the Husband, Cr. El. 270. for the same Reason which proves that the Intermarriage with 11 H.7. 19 b. a Stranger shall be a Countermand of the Attornment for the Benefit of the Hulb. proves that when the Grantor marries with the Grantee, that it shall not be a Countermand, for that shall be for the Benefit of the Husb. And so in the princip. Case it is for the Benefit of the Hulb. that the Will by the Marriage shall not be countermanded, but shall take Effect according to the Purport thereof: And it was faid, That the Case of a Will when the Wo. marries with a Stranger is not like the Case of Attornm, when the Grantor marries with a Stranger; for the Will of a Woman can't take any Effect during her Husb's Life, but only after his Death, and can by no Possibility be any Prejudice to him: For if he has Issue he shall be Tenant by the Courtesie, and he may take the Profits thereof during the Coverture, or dispose of them at his Pleasure to all Intents and Purposes, as if no Will had been made. '2. To say as it is said in 3 E. 3. Devise 12. that the Will (b) of a Feme (b) Godb. 15. Covert is void, because the Law presumes that it was made Mo.123. Golds. by Cohersion of the Husb. that can't be so intended in this Case, 112. b. Br. Dev. forafmuch as in the Case of 3 E. 3. the Will was made by a 34. vet. N.B. 86.b. Woman when the was Covert, which can't be made and 1 r Sid. 17. Ances Woman when she was Covert, which can't be made good by 51.b. 24825H.8.
any Custom: But here in our Case the Woman was sole, and cap. 5. Plowd. 344
any Custom: But here in our Case the Woman was sole, and a. Perk. Sect. 501. free from all Constraint at the Time of the making of her 502. Br. Testam.9 Will. 3. It was objected, that if the Will was not counter
13, 21. Dy. 143.

manded by the Intermarriage, without Question it was not 18E-4.11.b. 12.a.

nor could be countermanded by the Woman's Words after Br. Conscience 28

the Marriage, for after Marriage the whole Will of the Wife 3 Lcon. 81,82,83.

is in Indexest of Law Subject to the Will of the Wife 3 Lcon. 81,83,83. is in Judgment of Law subject to the Will of the Husband, Godb. 143, 1 and as is commonly said, a Feme Covert has not any Will; 2 Brown, 21%. and therefore if the Will stands notwithstanding the Intermarriage, her Countermand afterwards is of no Force nor Effect, quod fuit concessum per tot' Curiam as to this Point : Further it was objected, That notwithstanding that after the Marrage the Wife could not revoke her Will, so that now after the Marriage it is irrevocable, yet that is no Reason that the intermarriage should be a Countermand; for if a Man of found (c) Memory makes his Will, and afterwards becomes noncom-(c) 1 And. 181, the mentis; in that Case until the Time of his Death, after Goldib. 109. hat he became of nonfane Memory, he cannot countermand his Will, and yet the Disability or Impersection of nonane Memory, was not any Countermand of it. 4. It was faid

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FORSE and HEMBLING's Cafe. PARTIV

that Countermands of Wills are not favour'd in Law; and therefore forasmuch as there is no Book in Law in this Point, but the faid Case of Attornm. adjudg'd is all one in with the Reason with this Case; for these Causes it was concluded, that Indgment should be given against the Pl. But it was upon great Deliberation adjudg'd for the Pl. And in this Cafe it was unanimoully agreed upon the whole Matter, f. The taking of Huf. band, and Coverture at the Time of her Death, the Will was (a) countermanded, and that for two Reasons. 1. The making of a Will is but the Inception of it, and it doth not take any Effect 'till the Death of the Devisor, for (6)3Co.29.b.32.2 omne (b) Testament' morte consummat' est; & (c) voluntas est ambu-

Colin 112.b. latoria usque extremum vita exitum: Then it would be against the Nature of a Will to be so absolute, (d) that he who makes it, being of good and perfect Memory can't counter. Arbit. 165 mand it: and therefore this taking of Husband being in the Bacon sMax.reg. Cafe at Bar her proper Act, shall amount to a Countermand in Law. But when a Man of found Memory makes his Will. and afterwards by the Visitation of God, becomes of un. found Memory (as every Man for the most part before his Death is) God forbid that this Act of God should be in Law a Revocation of his Will, which he made when he was of good and perfect Mem. 2. It would be mischievous to Women, that after their Intermarriages they could not for no Caufe countermand their Wills. 3. As the Law will not allow any Custom, That a Feme Covert may make any Devise, for the Presumption that the Law has, that it will be made by Constraint of the Husband, as it is adjudg'd in (e) 3 E. 3. So if it was in the Power of the Wifeafter her Marriage to revoke her Will, the Law would not fuffer the Continuance thereof after Marriage, forasmuch as the Husband by Constraint may cause her against her Will to revoke or continue it. And as to the faid Case of (f) Attornment, it was said in 2 R. 2. that when the Woman in the same Case by her Deed sealed and deliver'd by her, granted the Reversion to another, it took fuch Effect against herself, that the herself could not by any Words countermand it before or after the taking Husband, and therefore it is not like the Case of a Will, and therefore it might well be, that inafmuch as her Grant by Deed

flood in Force after the taking of the Grantee to Hulband,

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that it shall not be any Countermand.

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(e) 1 Sid. 17. Antea 61. 2. 3 E.3. Demile12.

(f) 1 And. 181. Co. Lit. 310.2.b Goldib. 110. 1 Vent. 186. 1 Roll. 399. Kefw. 163. 2. Cr. El. 270. 1 Mod. Rep. 91. Bridgm, 83. 11 H. 7. 19. b.

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### Pascha 31 Regina ELIZABETHE. In the King's-Bench.

Ming 384. Chammon o Patch JANG 897.

#### HERLAKENDEN's Cafe.

DObert Ivy brought an Action of Trespass against Roger 11 Co. 52.2. Merlakenden, Esq; for breaking of his Close, f. 380 Acres

Parcel of Colme-Park in Colme in the County of Effex, and 300 Oaks, 300 Ashes, 300 Maples, and 100 Beeches there growing cutting, and 1000 Load of Wood and Underwood carrying away, &c. and the Def. as to the whole Trefpals, preter fraction' clauforum, necnon preter fuccifion' 200 queraum, 10. fraxinorum, & 10. acer' parcel, &c. pleaded not guilty; Et quoad fractionem clausorum prad' ac herba pradict edibus ambuland' conculcat', O' consumption'; The Def. pleaded the Matter in Law which follows, by which he entitled himself to the same Land, and justified the cutting of the Trees, but in the quod, Oc. (as appears before) the Trespass sto the Trees was utterly omitted, and so in Law nothing pleaded thereto; and then the Demurrer being joyn'd, the whole is discontinu'd, as it is agreed in 7 H. 6. 27. a. Vide 27 H.S. I. & Dyer 9 Eliz. 264. 7 E. 4. 24. b. & 10. 7 H.6. sa. And therefore to the Intent the Matter in Law might appear, by Assent the Def's Plea was amended. For it was greed per totam Cariam, that all was (a) discissionem arbo-488. I Rollace. thereupon the Roll was amended: Et quoad succissonem arbo-488. I Rollace. thereupon the Roll was amended: Et quoad succissonem arbo-488. I Rollace. There in Law in Effect, 7.2. 2Bulft-335. eed per totam Curiam, that all was (a) discontinu'd, and (a) r Roll. 487. wa such, Edward Earl of Oxford was seised of Colme-Park 228. Cr. 102. in Effex, in Fee, and 17 Eliz. leafed to Tho. Barefoot, Tho. Lu-Yelv. 6. rand John Collins, the faid Park (except the Trees in the Declaration mention'd) for 21 Years; John Collins affign'd his Merelt to Anthony Luter, and afterwards the Earl fold the faid Barefoot, Luter and Luter the Trees aforeud, who 15 Julii, anno 26 Eliz. leafed the said 380

Acres

Acres of Land and Paffure, Parcel of the Park aforefail (upon which the Trees aforesaid grew) to one John Bragge for II Years; and afterwards in August 26. Eliz. Bareful Luter and Luter fold the faid Trees to the Defendant; and afterwards, 27 Eliz. Bragge affigned his Interest to the Pl. and afterwards the Defendant cut down the Trees, and if this cutting down was lawful or not was the Queftion And the Point was, When a Man leafes his Land for Year excepting the Wood, and afterwards the Lessor grants the Wood to the Lessee, if now the Wood is so united again to the Land, that by the Lease of the Land the Wood shall pass as a Thing annexed to it, or if the Wood remains a an Interest distinct and severed from the Land, so that by the Lease of the Land it shall not pass to the Lessee; and in this Case divers Points were resolved: 1. When a Man makes a Lease for Life or Years, the Lessee has but aspe-(e); Co 76. b. cial Interest or Property in the (a) Trees being Timber as 31. Co. 48. b.

St. b. Cro. Car. Things annexed to the Land, so long as they are annexed 242, 274.2 Rol. to it: But if the Lessee or any other severs them from the 1801. Rep. Land, the Property and Interest of the Lessee is thereby de-.O. Benling. Land, the Property and Interest of the Lessee is thereby de Palm 327. Mo. termined, and the Lessor may take them as Things which were Parcel of his Inheritance, and in which the Interest of the Lessee is determined. In an Action of Wast for cutting down of Trees against Lessee for Life or Years, the Writ faith ad exharedationem, and it wou'd be absurd that the Lessee who has but a particular Interest in the Land shou'd have an absolute Property in any Thing which was

(6) 5 Co. 13. b. 6 Co. 43.24 13 Co. 81. b. Cro. El. 777. (c) Dr. & Send. 74. Mo. 9. Palm. 328. Br. ler 13. 1 Rol

Parcel of the Inheritance: At the Common Law, if To nant in Dower, or Tenant by the Curtefie cut down Trees he in Reversion might take them, yet their Estate is as hig as Leffee for Life: But the Leffor shou'd not have an Action of Wast at the Common Law against the (b) Lessee, because it was his own Act, and it was his Folly to make a Les to him who ought to do him Fealty, and yet will commi Wast: It was also his (c) Folly that in his Lease he would not provide by Condition or Covenant that he should no commit Wast, or to prevent it by Exception. If I lease m Land for Life, (d) and afterwards give the Trees, and at terwards the Lessee dies, yet the Donee can't take them as it is held per totam Curiam in 21 H. 6. 46. d. because the Time of the Gift the Lessee had the Property in the as annexed to the Land. And Sir Christopher Wray C.J. faid a Case between Moyle Finch Esquire, and Madam Fine his Mother was now lately referred to him and Sir Rog Menwood Chief Baron, which in Effect was, That Mada Finch had an Estate for Life in certain Land without la peachment of Wast, and the said M. had the Inheritant expectant, Madam Finch cut down divers Trees growing upo

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e faid Land; The Question was, if the faid Moyle might fully take the said Trees, or if they of Right belong'd to Mother; And upon Conference had with divers other Juces they resolved: 1. That if the said Estate had been ade for Life without any fuch Clause of without Impeachent of Wast, that without Question the said M. should have Trees, because they were Parcel of his Inheritance, and at the Interest which the Tenant for Life had in the Trees, as by the Severance from the Land determined, because she d them as Things annexed to the Land. 2. In the same ald them as Things annexed to the Land.

Afe it was resolved, That the said Clause of without (a) (a) 11 Co. 63. 25 appeachment of Wast gave the Tenant for Life no great-Dyer 184. pl. 63.

Interest in the Trees then she had by the Demise of 1 Roll. Rep. 182.

Interest in the Trees then she had by the Demise of 1 Roll. Rep. 183. 2 Roll. Rep. 283. 2 Roll he Land, but it shou'd serve only that the shou'd not be \$25. 2 Roll. Rep.

mpeached in any Action of Wast, either to recover Da-Co. Lit. 220.

Hob. 132. Latch.

ages, or the Place wasted; As if I grant to one that he 269, 270. 2 Inst.

all not be impeached for cutting of all my Trees in 146. Moor 18,

the Woods, it shall excuse him in any Action brought 23. 2. 72. 2.

gainst him for the cutting, but notwithstanding that the Poph. 193, 194.

rest is thereby given him. So if a Man differises me of my 102. Plowd. rest is thereby given him. So if a Man disseises me of my 135. b. Cro. Jac. and or dispossesses me of my Goods, and I (b) release to 216. Hecl. 77. im all Actions, yet I may enter into my Land, or take Co. Lit. 286.a.b. by Goods, for the Discharge of my Action is no Bar of Lit. Sect. 496. y Right; and therewith agrees Litt. cap. Releases 115. and Il this was faid and reported by the faid Sir Chr. Wray. Vid. 7(c) H. 6. Wast. 8. where it is said, if a Man leases Land (c) Dyer 184. bique impetitione vasti, and a Stranger cutts down Trees, and pl. 63. 1 Rol. Rep. 183. 11 Co. he Lessee brings an Action of Trespass, he shall not recover 83. 2. 4 Leon. Damages for the Value of the Trees, because the Property 143. Poph. 194. to him in the Reversion, wherefore the Lessee shall reco-(d) 6 Co. 41. 2 fer but for the cropping and breaking of the Close: And it 9 Co. 80. 2. Co. 725 said, That if Tenant in Tail after Possibility of Issue Lit. 27. b. 1 Rol. 18th fells the Trees, the Lessor shall have them: for in 184. F. N. B. s much as he has but a particular Estate for Life in the 59. P. 39 E. 3. and, he can't have an absolute Interest in the Trees, Stud. lib. 2. c. out he shall not be punished in (d) Wast, because his origi-Lit. Sca. 34.

Il Estate is not within the Statute of Gloucester cap. 5. 2. It 10 H. 6. 1. b. At Eliate is not within the statute of Council, (e) or other 45 E. 3. 25. 2.

At of God, the Lessee for Life, or Lessee for Years has a 11 H. 4. 14 b.

pecial Interest to take the Timber to build the House a-15. 2. 11 H. 6.

Pecial Interest to take the Timber to build the House a-15. 2. 11 H. 6. ain if he will for his Habitation: But if the Lessee (f) 828. West. symb. alls down the House, the Lessor may take the Timber as 180. b. 2 Inst.
Thing which was Parcel of his Inheritance, and in which (e) 11 Co. 81. b.

Thing which was Parcel of his Inheritance, and in which (e) 11 Co. 81. b. he Interest of the Lessee is determined, as in Case of Trees 82. 2. 1 Rol. ind for the same Reason; and notwithstanding he may have Lit. 53. b.
In Action of Wast and recover treble Damages: Vide 44 E. 3. (f) Postera 87. 2. 5 6, 6 44. 29 E. 3. 42. 2 H. 7. 14. per Brian. 10 H. 7. 2. 13 H. 7. 9. 21 E. 4. 52. 1. Mar. Dyer 90. Eliz. Dyer 194. 3. It was resolved, That if (g) Trees

HERLAKENDEN'S Cafe. PARTIN being Timber are blown down by the Wind, the (a) Le

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for shall have them (for they were Parcel of his Inheritance and not the Tenant for Life or Tenant for Years: But they be Dotards without any Timber in them, the Tenan for Life or Tenant for Years shall have them. Vide 40 Aff. 22

that Guardian (b) in Chivalry shall not have Windfals; and fo the Quere in 7 H. 6. 38. well fatisfied. 4. Point was, when

the Earl leafed the Land for Years excepting the Trees, by which they were fevered from the Possession of the Land during the Term, then after the Lessor granted the Tree

to the Lessee, if now they be reunited to the Possession of the Land fo that when the Term ended the Leffor though

have them again as Things annexed to the Land. And was resolved, That the Lessee had in Judgment of Lawab

solute and divided Property in the Trees, (c) so that by the Lease of the Land they shou'd not pass, and therefore this

Difference was taken: If I enfeoff you of my Land (et Roll. Rep. 101. cept the Trees) to have and to hold to you and your Hein

now the Trees in Property are divided from the Land, al tho' in facto they remain annexed to the Land, for if on cuts them down and carries them away it is not (d) he

lony: And therefore in such Case if the Feoffor grants the Trees to the Feoffee, they are reunited as well in Proper-

ty as they are de facto, and the Heir of the Feoffee full have them, and not the Executors, for the Feoffee had ab

solute Ownership in both, so that it is not any Prejudice but rather a Benefit to him that they are reunited to be

Land. But in the Case at Bar he had but a Term for Year in the Land, fo that he had not Equality in Ownership in

both, and it wou'd be a Prejudice to him, that during the Term he could not fell them, but shou'd be punished in Wi

and after the Term shou'd lose them, and it wou'd best

against Reason that the Lessor shou'd against his own Gra have them again. It was also said, That Barefoot, Luter and

Luter were Tenants in Common of the Land, and they well Joynt-tenants of the Trees, and so their Interest divers an

of feveral Qualities, therefore there could not be an Union

between them. Nich. Fuller and Tanfield were of Council with the Pl. and Egerton the Q's Sollicitor and Coke with the De

Nota Reader, Mich. 18 & 19 Devon'; It was adjudged i

C. B. that Wast might be committed in (f) Glass annext to Windows, for it is Parcel of the House, and shall descen as Parcel of the Inherit. to the Heir, and that the Executor should not have them; And altho' the Lessee himself at h own Costs put the Glass in the Windows, yet it being on Parcel of the House he could not take it away, or wastin

he should be punished in Wast; And upon the said Judgmen a Writ of Error was brought in B. R. and there the Judgm.

affirmed. Nota also inter Warner & Fleetwood, Mich. 410 42 Eliz. in C. B. it was resolved per totam Curiam; the

(6) Les 74-

(d) 2 Brownl.

(e) Hob. 173.

(f) Moor 178. swinb. 132, 345. Co. Lit. 53. 2. Le

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Glass annexed to Windows by Nails, or in other Manner by the Leffor or by the Leffee could not be removed by the Leffee, for without Glass it is no perfect House; and by Lease or Grant of the House it should pass as Parcel thereof, and that the Heir shou'd have it, and not the Executors; and peradventure great Part of the Costs of the House confifts of Glass, which if they be open to Tempests and Rain, Wast and Putresaction of the Timber of the House would follow, which agrees with the Judgments given before. It was likewise then resolved, That Wainscot, be it Co. Lit. 53. 2 annexed to the House by the Lessor or by the Lessee, is Par-swinb. 346, 132. gel of the House: and there is no Difference in Law if it Owen 70, be fasten'd by great Nails, or little Nails, or by Scrues, or Moor 177, 178. Irons put through the Posts or Walls (as have been invented of late Time;) But if the Wainscot is by any of the faid Ways, or by any other fastned to the Posts or Walls of the House, the Lessee cannot remove it, but he is punishable in an Action of Wast, for it is Parcel of the House, and by the Lease or Grant of the House, in the Manner as the seeling and plaistering of the House, shall pess and by the Lease or Grant of the House, in the same

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# Hill. 33 ELIZABETHÆ Regina.

#### FULWOOD's Case.

Etween Cartwright Plaintiff, and Roberts Defendant in Ejectione firma of Houses in London upon a Demile made by Sara Sharington, &c. Upon Not guilty pleaded, the Jury gave a special Verdict to this Effect; T. Caffle was seised of the Houses aforesaid, and primo Eliz. took a Wife, and afterwards 1 Eliz. before the Mayor and Aldermen of London acknowledged a Recognisance of 250 l. to the Chamberlain of the City of London and his Successors, according to the Custom for Orphanage Money; And afterwards, f. 8 El. the faid Caffle came before the Recorder of London and Mayor of the Staple, and acknowledged fe debere 200 1. to Sir Thomas Rivet, And afterwards anno to Ele Sir Thomas Rivet fued Execution upon the faid Statute, and Liberate; upon which the Sheriff delivered the faid Houses amongst others to the said Sir Thomas (but it did not appear that the Liberate was returned;) And afterwards the Successors of the said Chamberlain sued Execution in Lon don by a Precept in Nature of an Elegit directed to one Flick Serjeant of the Mace, and Officer of the faid Court, who by Force thereof delivered the faid Houses among o thers for one Moiety to the Chamberlain aforesaid; And afterwards Tho. Caftle died, and after his Death his Wife recovered Dower, and had the faid Houses affigned her for her third Part to hold in Dower, and she died in an. 18 El. and afterwards the faid Chamberlain affigned over his literest to one Fulwood, and afterwards 21 Eliz. Sir T. assigned over his Interest to the said Fulwood also: Anno 29 Em the Heir of the faid Caftle demised to Guilbert Sharington the faid Houses for Years, who demised to the Lessor of the Plaintiff, upon whom the Defendant by Title derived from the said Fulwood enter'd, &c. And if the Entry of the Def. was lawful or not, was the Question. And in the Case 8 Points were unanimously resolv'd by Sir Christophi

Justice, and the whole Court. 1. That whereas objected that in Case of a sole Corporation or Bo-olitick, be it created by Charter or Prescription, as hop, Parlon, Vicar, Master of an Hospital, Oc. no (4) (4) 1 Rolls 919. fion, but the Executors or Administrators of the Bishop, Corporation for ofon. Oc. shall have them, no more than the Heir of a 20 E. 2. Wate Man can have them; for Succession in a Body Poli-Dyer 48. pl. 15. ch is Inheritance in Case of a Body private. But otherise it is in Case of a Corporation (b) aggregate of many, (b) Oyer 48. pl.
Dean and Chapter, Mayor and Comminalty, and the like, 15. 27 H. 8. 15.20
there they in Judgment of Law never die. And all herefore it was concluded, that the Chamberlain of Lonbeing a fole Corporation, that his Successor could not te the faid Recognisance acknowledged to his Predecessor; it was refolved, that the (c) Successor should have (c) Cr. Eliz. for in this Cafe the Corporation of the Chamberlain 1 Rolls 515. Cr. by Custom, and the same Custom which has created Jac. 159. ad made him a Corporation in Succession as to this spe-Purpose concerning Orphanage, has enabled his Successor take fuch Recognisances, Obligations, &c. which are ade to his Predecessor, and such Custom is grounded upgreat Reason, for the Executors or Administrators of Chamberlain ought not to intermeddle with such Remisances, Obligations, Oc. which by the said Custom te taken in the corporate Capacity of the Chamberlain, d not in his private Capacity: But a Bithop, Parson, Oc. any fole Corporation which are Bodies Politick by Preiption, can't take a Recognisance or Obligation but only their private, and not in their politick Capacity, for wants such Custom (as is in the Case at Bar) to take Chattel in their politick or corporate Capacity. 2. It m objected, That where the Statute of W. 2. cap. 18. which the (d) Elegit, provides, Quod de catero fit in electione (d) 2 Inft. 1946 w, Oc. quod vicecomes liberet ei omnia catalla, &c. O medie-395m terra sua, quousque debitum fuerit levatum per rationabile or extentum, &c. That because the Statute gives exprelly to the Sheriff to execute the Elegit by reathe Extent, which is to be intended by (e) Inquisi-(e) Poster 67. 2. on of honest Men, and for as much as the Sheriff is a Cr. jac. 579.

Let Officer and sworn, &c. that the said Act by any Dyer 100. pl. 72.

Lined Construction shall not be extended to a Serjeant El. 584. Dall.

Mace (who is not sworn) to take a Jury, &c. and 28. pl. 1.

Letterpon the Books in 7 H. 6. 35. 14 E. 2. Redisseifin 9. 2 H. 6. 25. were cited, That an Action of Wast nor isseisin doth not lie in (f) ancient Demesn, because (1) 2 Sand state Enquiry of Wast, and the Proceeding in Redisseisin is 323 Doct. pl. 324. Dinted by the Statutes to be made by the Sheriff, and in

ancient Demela there is not any Sheriff, and the Bailiff who is Officer in ancient Demein thall not supply the Place of the Sheriff. But it was refolved by the whole Court, that the Execution was well enough, for the Statute which provides, That Process shall be made to the Sheriff, by Equity is (a) Cr. Car. 119. to be extended to every (a) other immediate Officer to every Hob. 82 Court of Record of the King, and en poting, because the Court of Record of the King, and co poiss, because the Statute of W. 2. cap. 18. couples the Elegis with the Fieri facias, and limits both to be executed by the Sheriff; and yer without Question the Serjeant at Mace in the Case at Bar may execute a Fieri facias: And it is not like the Cafe of Wast, for the Statute of W. cap. 14. provides that in (b) propria persona accedat ad locum vastatum; So that the

b) 2 Inft. 300. Dyer 204. pl. 1.

(d) Cr. Jac. 478. 2 Rolls 473.

(e) Hob. 55. 2 Rolls 700, Cr. Car. 363. 2 Ventr. 3. Raym. 150. Vaugh, 102.

(f) Hard. 413. Hob. 55, 56,26: 2 Rolls 700. Raym. 150. Lanc 40.1 Siderf. 27. 3 Co. 9. 2. Cr. Car. 363. Vaugh. 102.

personal Appearance of the Sheriff is requisite, and in the (c) 10 H. 7.28.2. Cafe of Rediffeifin the Sheriff is (c) Judge, and therefore not like. 3. Where it was further objected, that the Execution upon the Elegit was not lawful, for as much as Sir Th. Rivet was in by Matter of Record whereof he ought to take Notice, and to have fued Scire facias against him. in Proof of which the Books in 9 E. 4. 24. & 2 R: 3. 8. Simpson's Case, were recited. But it was resolved per totam Curiam. That the Execution upon the Elegit was good enough: But it was faid, if the Sheriff had returned the former by Extent, and the Matter had appeared to the Court, the Plaintiff (d) ought to have had a Scire facias; But the whole Court faid, if the Sheriff levies Execution it is good enough, vide for that 22 E. 3. 7. 4. It was objected, that here was no Statute or Recognisance in Nature of a Statute sufficiently found, for the Jurors have found, That the faid Tho. Cafile Veniebat coram R. O. Recordatore civitatis London. & Tho. O. majore stapula, & recognovit se debere Tho. Rivet militi 200. l. and doth not fay, secundum formam (e) Statuti, Gr. nec per scriptum obligatorium, Gr. where the Statute of 23. H. 8. provides that it shall be by Bill Obligatory fealed with 3 Seals. But it don't appear by the Verdict, that there was any Bond or any Seal, neither doth it appear by any Word of the Verdict, that it was made according to the Stat. erc. And it was faid, that altho' Verdies being the Words of Lay Men shall be taken according to their Meaning, and there need not be fo precise Form in them as in Pleading, yet the Substance of the Matter ought to appear either by express Words, or by Words equipollent, or tant-amount, fo that there ought to be convenient Certainty, which if it be false the Party for such Falsity may have his Attaint: But it was resolved, that the (f) Verdict is good enough, for in as much as they have found a Recognisance before the Mayor and Recorder, &c. it shou'd be in a Verdict of Laymen intended according to the Statute, for otherwise they could not

take any Recog, and also the whole Sequel of the Verdict in

plies that this was a Recognisance in the Nature of a Statute,

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or otherwise no Execution could be sued thereupon in the Chancery. 5. It was objected when the Wife of the Conufor recover'd Dower, and thereby the Pollession of the Co nufee was evicted, and also when a greater Term in the Moiety was evicted by Force of the Elegit than the Conufee had; for (for Example) the Extent upon the Statute if no Eviction had been incurred in 13 Years; and the Moiety which was evicted by the Elegit wou'd be subject to Execution by Force of the Elegit for 15 Years; fo that a greatter Term was evicted by Elegit, and a greater Estate was recovered by the Writ of Dower than the Conusee had, and therefore he shou'd be put to his Scire facias upon the Statute of 32 H. 8. cap. 5. (a) for otherwise great Mischief (a) 2 Infl. 6775 would ensue, for if the Conusee should hold over after the Co. Lie Death of the Tenant in Dower, and after the Extent upon 290. the Elegit incurred, then during the Life of the Tenant in Dower, and during the Execution upon the Elegis, the Conusce might sue a new Execution upon the said Statute. and so have double Remedy, which never was the Intention . of the Statute. But it was resolved per totam Cyriam that in this Case the Conusee could not have any Help of the faid Statute, for in as much as but Part was evicted, f. the Moiety upon the Elegit, the Conusee should not only hold Co. Lir. 289 b over the other Moiety, but also after the Death of the Tenant in Dower, and the Extent upon the Elegit ended. should re-enter into the faid Land so evicted, and theref. he is not helped by the said Act, for the said Act will not help but when the Conusee is put clearly without Remedy to obtain any Part of his Debt: As where the whole Execution is avoided by Title paramount for ever. And that ap-Co. Lit. 289. b. pears by the express Words of the Preamble, for the Words 5 Co. 87. 2. of the Preamble are; By Reason whereof the Obligees, Recognifees and Recoverers have been thereby fet clearly without Remedy by any Manner of Suit of Law. And the Body of the Ad refers to the Preamble, scil. such Lunds, Oc. In the Co. Lie 285. L. Body of the Act it is said, Any such Lands, Tenements or Hereditaments, as be or shall be had or delivered in Extent, and doth not say, or any Part thereof: And it is provided that new Execution shall be done; for the levying of the Residue of all such Debt and Damage as then shall appear to be unlevied, Oc. And that can't be when but Parcel of the Land extended is evicted; for by the Common Law the Conufee in such Case is not without Remedy, but the Conusee shall hold the Residue of the Landover, till the Residue of the Debt shall be fatisfy'd; and therefore if he shou'd have his Remedy also upon the said Stat. he wou'd have double Satisfaction, which wou'd be inconvenient: And if the Convice has Remedy eith, in pra' for Part, or in future for all, or Part, the faid Act of 32 H.S. doth not extend to it. 6. It was object. Co. Lit. 289. b. ed that when Sir T. had Execut. (exem' gra') of 4 Houses, and the Extent of that by Course of time would endure for 13 Years and afterw. 2 of the faid Houses are evicted by Elegit for 15

(b) Palm. 272.

Years, and afterwards Sir T. River affigned over all his Interest in the Execution upon the Statute to Fulwood, that this Affignment as to the two Houses so evicted was void, for in that a greater Term was evicted than the Conusee had for the Moiety, and then at most the Conusee had but a Possibility which could not be assigned over. And a Case adjudged now lately in C. R. was cited, which was fuch in Effect; A Man possessed of a Term for divers Years, devifed the Profits thereof to one for Life, and after his Decease to another for the Residue of the Years, and died, the first Devisee enter'd by the Assent of the Executor, and afterwards he in the Remainder during the Life of the first De. vifee affigned it to another, and afterwards the first Devifee died; it was adjudged that the Affignment was void, for he Career's Cale.

Brownl. 175.

Bulltr. 192.

had been devised to him for so many of the Years as he shou'd

Palm. 48. 2 Rolls live, or for the whole Term if he should live so long, so that the Interest of the Term fub modo is in him, and the other in Remainder has but a Possibility which he can't grant over: But it was resolved, That in the Case at Bar, the Conusee had an Interest in the two Houses which were evicted, for it was agreed by them, if a Man is bound in two Statutes, and the latter Statute is (b) first extended and delivered in Execution, and afterwards the first Statute is put in Execution for greater Time, and for a greater Sum than the first was, yet when the first Stat. is satisfied, and his Interest lawfully determined, the 2d Conusee shall have the Land again by Force of the first Extent: and so in the Case at Bar, when a Moiety was evicted for 15 Years by Force of the Elegit, now by Computation the Conusee of the Stat. shall hold the other Moiety for 15 Years, and after the 15 Years expired, the whole Land, until the whole Debt upon the Stat. is fatisfy'd: So that it is not a Possibility, nor co. Lit. 45. 2.

co. Lit. 45. 2.

co. 2. 242. 2.

co. 30. 2. 47. 2.

cortum reddi potest: And altho' Casualties and sudden Accico. 30. 2. 47. 2.

dents may happen, yet Gasus fortuitus non est sperandus, &

lane 51. Hetly.

certum reddi potest: And altho' Casualties and sudden Accicertum reddi potest: And altho' Casualties and sudden Accilane 51. Hetly.

ce) nemo tenetur divinare. It was also resolved, that if the

conuse is ousted by Wrong by the Conusor, or any other

d) Hard. 82.

who has the immediate Estate To uncertain but that by Computation it may be by reasonwho has the immediate Estate, that the Conusee shall hold (f) over. So when the Wife (g) of the Conusor recover'd Dower, the Conusee shall hold over, for the claimed by her Husband: The same Law if a Man makes a Lease for Life or for Years, and (h) afterwards disseises his Lessee for Life, or oults his Lessee for Years, and acknowledges a state or Recognisance upon which Execution is sued, and afterw. the Lessee for Life enters and dies, or the Years expire, the Conusee shall re-enter and hold over; And such Evice tion for a Time is not within the said Act of 32 H. 8. because the Conusee has Remedy in future. 7. It was objected that for as much as the Liberate was not returned,

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(d) Hard. 82. Lit. Rep. 98. (e) Antea 28.2. Lit. Rep. 98. (j) Co. Lit. 189. b. (g) Co. Lit. (4) Ca.Lit. 289.b.

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Execution was not lawfully done, for in as much as Tenant by Statute Merchant is Tenant by Matter of Record, the Liberate ought to be returned, or otherwise he will be Tenant by Matter in fact in pais, and not by Matter of Record. Also the Liberate ought to be returned, or otherwife the Time of the Liberate made will not appear, and the Term of the Conusee thall begin from the Time of the (a) (a) Cr. El. 463 Liberate executed, quod vide 33 H. 8. tit. Statute 41. 2. It appears by the Liberate that the Conusee shall be satisfied for all his Costs and Damages qua tune, f. tempore of the Delivery of the Land to the Conusee sustinuit, so that the Time of the Delivery is material and ought to appear of Record. 2. If the Terre-Tenant shou'd be driven to sue a Scire fac' after the Extent incurred by Course of Time, the Liberate ought to appear of Record, so that it might appear to the Court that the Time is past. 4. It was said, that it wou'd be dangerous to Purchasors, for they could not know of the Execution by any Search, if the Execution don't appear of Record: But it was refolved per totam Griam, that the Execution of the Liberate was well enough, altho' the Writ was not (b) returned, for the Writ is not conditional, but has () 1 leon. Rep. these Words, Et qualiter hoc praceptum, &c. and is stronger Moor 200. than the Case of the capias ad satisfaciendum, for there are 2 Leon 13. Words conditional, and yet the Execution is good altho' the Kelw. 3. a. Writ is not returned; So of Habere facias seifnam, and ge-Latch. 223. 4 Co. nerally of all other Writs of Execution which are the most 90. a. final Process, and after which no Judgment is to be given, nor no farther Process had: Vide Pascha 13 Eliz. inter Borley & Borley, 17 Aff. 24. 32 E. 3. 101. tit. Scire fac', 19 E. 3. Sitre facias, 120. 20 H. 6. 24. 21 H. 6. 5. b. 11 H. 4. 57. b. But it was faid, that this Case was not like the Case of Elegit, where an (c) Inquisition was to be ta. (c) Postes 74. b. ken, for there the Writ ought to be returned, to the Ins Jac. 169. Dyer fufficiency of that Inquisition; But it was agreed clearly, El. 584. Dall at. be delivered, or Seisin had, or Goods sold, Oc. which were but Matters in Fact, these are good altho' the Writ is not menured: (d) But every Inquest taken by the King's Writ (d) 5 Co. 50. 2 ought to be of Record, and not averrable by the Country. Jac. 569 8. It was objected that after the Extent upon the Statute Staple incurred by Couse of Time, the Conusor might enter, and should not be put to his Scire facias; for altho might adjudge and take Knowledge of them, for first the Time of the Conusans of the Statute appears, and for what Time the faid Debt was with-held till the Liberate, to that they might well judge of the Damages and Costs; and therefore when by Course of Time as well the Debt

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Ful wood's Cafe.

PART IV.

the Costs and Damages, and greater Sum is levy'd, the Connusor might enter: And Difference was taken when the Extent incurs by Effluxion of Time, and when by casual Profit; for when it is satisfy'd by casual Profit, he ought to have sainst 482. (a) Sci' fac', but in the other Case he may enter. And to this Intent the Books in 32 E. 3. Sci' fac' 101. 11 H. 6. 7. 9 E. 4. 50. Hard 82.

2 R. 2. Execution 17, Fuz. 15 H. 7. 15. were cited. Et vide 30 H. 6. 1. b. 38 E. 3. 10. 14 H. 4. 9. That in Debt the Court may affels Costs and Damages without any Enquiry for the

Sand. 107.

(e) 1 Rol. 486

2 Rol. 480. Hard. 80.

Inft. 680.

(e) 2 Inft. 678.

Reason aforesaid. But it was resolv'd by the whole Court, That in the Case at Bar the Conusor could not enter, for the Conusee shall hold the Land not only 'till he is satisfied for the Damages of the Debt, and for

(6) Cr. Car. 598, (b) Damages, &c. for the Detainer of the Debt, and for 599. 1 Rolls 479. Costs of Suit, but also for his reasonable Labours and Expences, &c. for the Entry thereof is, Tenendum ut liberum tenementum, &c. quousque debitum prad'una cum damnis & costagiis suis necessaries & rationabilibus, ut in laboribus, settis, dila-

much as they are incertain, and the Conuse in by Matter of Record, Reason requires that the Conuser should bring

defeated: Also the Court of (c) Chancery which awards the Extent and Liberate, shall adjudge of the Reasonableness of

Court, And it was agreed by all, That in Case of Elegit,
(d) Cr. Car. 598. (d) the Conusor after Satisfaction had, might enter, for he

should not have Damages, (e) Costs, nor other thing, but only the Land until the Debt is fatisfy'd; and because all is certain, the Conusor after the Extent expir'd might enter: Vide the Statute de Mercatoribus 13 E. I. the Statute

of Aston Burnel, and the Statute of 27 E. 3. for Costs, and Damages upon the Statute Staple. And Judgment was gi-

ven against the Plaintiff. William Daniel, James Dalton, and others were of Council with the Plaintiff, and Edward Coke

and others with the Defendant.

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Lizabetha Hynde fum' fuit ad respond' Rich. Libbe arde placito quare cum de communi concilio regni dom Reg' Ang provis sit, qd' non liceat alicui vastum vendition' feu destruction' facere de terr' domib', bosc' seu gardi-oxon' & nis fibi dimiff. ad term' vitæ vel annor'; ead' Eliz. de terr' & bole' in Bozing & Wihitchurch, quos tenet ad term' annor' ex dimissione Ro. Garrard de præf. Rich' ex assignat' quam Will. Hawe qui ill' præf. Rob. dimisit ad eund' term' inde fec' pref. Ri. fecit vast', vendition', & destruction', ad exhareditation' iph' Ric. & cont' form' provision' prædict' &c. Et unde idem Ric. per Tho' Lane attorn' fuum dic qd'cum præd' W Hawe fuisset seisit' de uno mesuag' voc' Hame Blace, 200 acr' terr', to acr' prati, 100 acr' past', & 50 acr' bose cum pertinentiis in Goring & Willitchurch præd' in domino suo ut de feodo: & sic inde seisst' existens 4 die Jan' ann' regnit dom' Regina nunc 29 apud Goring præd' per quand' indent suam int' præd' Will' per nomen W. Hawe de Dame Plate in paroc' de Goring in com' Oxon' yeoman ex una parte, & præd R. Garrard per nomen R. Garrard de Devioz in com' Bucks gen' ex alt' parte factam cui' alter part' sigillo pradict' Ro-bert' signat' idem Rich' hic in cur' profert, cui dat' est est-dem die & anno, dimissit prasat. Rob, tenementa prad'cinhi pert', except (durant' vita Agn' Hawe matris e fuld Wil. Itali part' mefu' præd' parc' præmif. pomar' & gard', uno claufo voc' Reaves Deane, & uno clauso voc' Bell Close, & pomar' voc' the Dachard Devell parcell' præmiss. qual' ead' Ag. tunc occupavit, & ante tunc acceptasset & agreasset recipere pro dote sua, de, in & pro tenementis præd' cum pertin': Habend' & occupand' ead' renem' cum pertin' (except' præexcept') eid' Ro.

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& affignatis suis a festo Natalis Domini tunc ultimo prateriro, usque finem & termin' 16 annor' extunc proxim' fequen' & plenarie complend', virtute cujus dimission' idem Ro. in præd' tenemen' cum pertin' superius in forma præd' dimis. intravit, & fuit inde pollession'; & sic inde postession' existens, 20 die Augusti anno regni dicta dom' Reg' nunc 29 apud Goring præd' concessit totum statum interesse & termin' annor' fua que ipfe tunc habuit ventur' de & in prædiet' tenementis cum pertin' superius in forma præd' dimiss. præf. El. Hynde, virtute cujus concession' præd Eliz, in eadem renementa cum pertinen' superius in forma præd' dimiss. intravit & fuit inde possession', ipsaq; Eliz. sic inde possession' existen' ac prædict' Will. Hawe de reversione inde in dominico suo ut de feodo in forma præd' seisit' existen', idem Will. 7 die Martii anno regni dictæ dom' Reg' nunc 30 apud Goring præd' per quand' indenturam suam barganiz & venditionis inter præd' Will' ex una parte, & eundem Rich' ex altera parte factam, cujus alteram part' figillo præd' W. Hawe fignat' idem Rich' hic in cur' profert, cujus dat' est eisdem die & anno ac in cur' diet' dom' Reg. de banco hic, scil. apud West. termino Paschz anno regni diet' dom' Reg' 30 suprad' coram tunc Justic' ipsi dom' Reg' de banco præd' ut factum præd' Will' Hawe per aplum Will. cognit', ac infra fex menses tunc proxim' sequen' scil. eodem termin' Paschæ debito modo in eadem cur' de recordo irrotulat' secund' form' statuti in hujusmodi casu edit' & provis. pro & in considerat' centum & viginti lib' præf. Will' per eundem Rich' ante tunc solur', barganizavit & vendidit eid' Rich' inter alia reversion' præd', habend' & tenend' fibi & hæredib' fuis imperpetuum; quorum quid' bar-ganiæ vendition' & irrotulamenti præd' prætextu ac vigore cujusdam statuti edit' in parliamento dom' H. nuper Regis Ang' 8. tent' apud West. in com' Midd' 4 die Februarii anno regni sui 27. de usibus in possession' transferend', idem Rich' fuit & adhuc feisit' existit de reversione præd' in dominico sua nt de feodo, ipfog; Rich, sic inde seiste existen', ac præd' Eliz. de tenementis præd' cum pertinen' sibi in forma præd' conces. in form' præd' possession' existen', ead' Eliz. fecit vastum, vendition' & defiruction' de terr', viz. fodendo in 10 acris terra in Goring præd' pascell' tenementorum præd' præfat' Robert' in forma præd' dimissor cent care ctat' argill' prec' cujuslibet carectat' argilli inde 8 d. inde capiend' & vendend' de bosc' eriam viz. fuccidendo & vendendo in quod' busco voc' Deigh azone, contin' 10 acr' bosci cum pert' in Goring præd' parcell'

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unementorum præd' cum pertinen' præfato Roberto superius in form' prædict' fuperius dimissorum ducent' quercus precii winflibet earum quinque solidorum per tot' contentum ejusdem bosci sparsim nuper crescen', ac in quodam alio bosco voc' the Bedge Row, jacent' in Goring præd', juxta præd' boscum voc' Beighgaobe in Goring præd', parcell' tenementorum prædict' cum pertinent' in forma prædict' præf. Robert' dimissor quadraginta quercus, precii cujuslibet earum sex solid' per totum content' ejusdem bosci sparsim nuper crescen', acin quadam Copicia voc' Dome Coppice, in Goring prad' parcell' tenementorum præd' cum pertin' præf. Rob. in form' przdie fuperius dimissorum centum quercus precii cujuslibet erum decem folidorum in ead' copicia voc' Bome Coppice similiter nuper sparsim crescen', ac in viginti acris pastur' voc the Danging in Goring præd' jacent' ibidem inter quoddam clausum voc' Dighazobe Bill, & aliud clausum voc' Dyker. giobe Bill, fcil. parcell' tenementorum præd' cum pertinenhis praf. Roberto in forma præd' dimissorum decem quercus precii cujuflib' earum decem folidor', fex fraxinos precii cue jullib' earum quinque folid', & decem fagos precii cujullib earum fex folidorum in eifd' viginti acr' pastur' similiter nuper sparsim crescen'. Ac in quadam sepe cujusdam clausi voc' home field in Whitchurch prædie feil. parcell' tenement predict' cum pertinentis pref. Robert' in forma predict' dimillorum contigue adjacent' cuidam bosco voc' Banes Conpice, tres quercus precii cujuflib' earum decem folidorum, ac unum fagum precii decem folidorum, ac in quadam alia fepe predict' clausi voc' Home Field in Whitchurch pred', scil. parcell' tenementorum prædict' cum pertin' præf. Rob. in forma præd' dimissorum contigue adjacent' prædict' bosco voc' Dome Coppice, decem quercus, precii cujuslib' ear' viginti olid'; ac etiam in permittendo germina de flipitibus viginti mill'aliarum querculorum voc' Dhefanting, viginti millium agorum, & ducentarum fraxinor'ad valentiam viginti librar n præd' bosco voc' Dighgzove, ac decem mill' aliar' quercuar' voc' Dhesapling, decem millium sagorum & centam minorum ad valentiam viginti librar in prad' bosco voc bebge Rom, & decem millium quercum, decem mill' . agorum & ducentarum fraxinorum ad valentiam viginti lirar' in præd' Copicia voc' Pome Coppice, per ipsam Eliz. er tot' content' illor' seperalium bosc' & copicia sparam nuer crescent' succisar' per morsus & depast' ammalium penitus evaltat' & destruct' fore ad exhareditationem ipsius Richardi. contra formam provisionis præd', unde dic' quod deteriorasell, & damn' habet ad valentiam 200 l. & inde produc' sed Et prædiet' Eliz. per Radulphum Burges attornat' suum, enit' & defend' vim & injuriam quando, &c. Et quicquid &c.

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Et die' qu' predict' Richard' actionem fuam pradictam versus eam habere non debet, quia dic' quod bene & verum eft quod prædictus Willielmus Hawe fuit feifit' de tenemene pred' cum pertin' in dominico suo ut de feodo, & sic inde feisit existen' prædicto quarto die Januarii anno regni die domina Regina nunc vicesimo nono supradicto, per Indentur' suam præd' dimisit præf. Roberto tenemen' prædie! eum pertinentiis, (except' præexcept') habend' & occupand' fibe affignatis fuis a prædict' festo Natalis Domini tunc ultimo præterit', ufq; finem & terminum præd' fexdecem annor extunc prox' sequent' & plenar' complend', virtute cujus di-missionis idem Robertus in tenemen' præd' cum pertinen' superius in forma præd'dimissa intravit & fuit inde possession, fic inde possessionatus existens præd' vicesimo die Augusti anno regni diet' dom' Reginz nunc vicesimo nono suprad' conceffit totum flatum intereffe & terminum ann' fua que iple tunc habuit ventur' de & in præd' tenemen' cum pertin' superius dimissis præf. Eliz. Hynde, virtute cujus concession prædier Eliz, in eadem tenemen' cum pertinen' fuperius dimif. intravit, & fuit inde possession' prout præd' Rich' per narrationem fuam præd' superius suppon': Sed ead' Eliz. ulterius die' quod eadem Eliz, de tenemen' præd' cum pertinen' fupe rius dimissis in forma præd' possessionat' existen' ac præd'W. Hawe de reversione inde in dominico suo ut de seodo seisse existen', post præd' feptim' diem Martii anno tricesimo suprad' & antequam præd' Indentura barganiæ & venditionis inter præd' Willihelm' ex una parte, & præf. Rich' ex alter parte fact' in cur' dict' dom' Regina de banco hic in forma prad'irrotulat fuit, quidam finis levavit in curia ejusdem dom' Reg de banco hic, scil. apud Westm' præd' a die Pasch' in 15 die anno regni sui tricesimo suprad' coram Edmundo Anderson, Francisco Windham, Willihelmo Persam, & Francisco Rhodes, tune Juftic' ipsius dom' Reg' de banco & aliis dist' dom' Reg' fidelibus tunc ibi præsentibus, inter præd' Richardum per nomen Richardi Libbe generosi queren', & prædict' Willihel mum Hawe & Elenam uxorem ejus deforc' de tenementir prædictis cum pertinentiis superius in forma prædict dimit interalia per nomina unius messuagii, unius cotagii, duorum gardinorum, septuaginta acrarum terr', unius acr' prati, de cem actarum pasture, fexaginta acrarum bosci, & decem acrar amphorum & bruera cum pertinen' in Goring & Whitchurch præd', & in Maple Deram in com' præd', unde placit' conven tionis fummonit' fuit inter eos in ead 'cur', scil.qd' præd' W.& El. recog' præd' tenem' cum pert' esse jus ipsius Ri. ut ill'qui idem Ri. habuisset de dono præd' Will' & Elena, Et ill' re miferunt & quiet clam' de ipfis Will'& Elena, & hæred' fuit prædiet Richard & hæredibus fuis imperpet : Et prætere idem Willihel' & Elena concesserunt pro se & hæred' ipsis

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W.qd'ipfi warrant' præd' Ri. & hæred' fuis præd' tenem' cum pertin' cont' omnes hom' imperpet', prout per finem illum hic in cur' de Recordo residen' plen' liquet, qui quid' finis in forma præd' levat', habit' & levat' fuit ad ulum præd' Rich. & hared' fuor' post quem quid' finem sicut præfert' levat' f. 25 die April an' regn' dict' dom' Reg' nunc 30 suprad' præd' indent' præf Ri, ut præfert' facta coram præfat' Justic' diet' dom' reg de Banco hic irrotulat' fuit : Et eadem El. ulterius dic' quod ipsa ad concession' reversionis tenementor' præd' cum pertin' superius ut præfert dimissorum virtute finis præd' præf. Rich. non attornavit five agreavit; Et hoc paratus est verificare, unde petit judic' si præd' Rich' actionem suam præd' versus eam habere debeat, &c. Et præd' Ri. dic' qd' placit' prædict' Eliz. superius in barram placitat', ac materia in ead' content' minus sufficien' in lege existunt ad ipsum Ri. ab actione sua præd' versus præd' El' habend' præcludend', quodque ipse ad placit' illud modo & forma prædict' placitat' necesse non habet nec per legem terræ tenetur respondere; & hoc parat' est verific', unde pro defectu sufficient' placiti in hac parte, idem Ric, petit judic' & damna sua occasione vasti præd' sibi adjudicari, &c. Et præd' Eliz. ex quo ipsa sufficient' materiam in barr' actionis præd' superius allegavit quam ipsa parat' eft verific', quam quidem mater' præd' Ri. non dedicit, nec ad eam aliqualit' respond' sed verificationem illam admitter' omnino recusat, petit judic' & quod præd' Ri. ab actione sua præd' versus eam habend' pracludatur &c. Et quia Justic' hic se advifare volunt de & super præmissis priusquam judicium inde red-dant, dies dat' est partibus præd' hic usque a die Paschæ in 15 dies de audiendo inde judicio suo, eo qu'iidem Justic' hic inde nondum &c.

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### Trin. 33 ELIZABETHE Regina. In Communi Banco.

#### HYNDE's Cafe.

To Ichard Libbe, Esq; brought an Action of Wast against

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Elizabeth Hynde, and declard, That William Hawe was feised of an House called Place, and certain Lands in Gering and Whitchurch in the County of Oxford: And 4 die Julii, anno 29 Eliz. by his Deed indented demised the Tenements aforefaid to Robert Garrard from the Feast of Christmes then past for 16 Years, who 24 Augusti, the said 29 Year affign'd his Interest to the Defendant: And that the said Will ham Hawe (a) 7 Mari, anno 30 Reg' Eliz. by Deed indented and inroll'd in the Court of C.B. Termino Pafche, in the faid 30 Year (within fix Months according to the Form of the Statute) for the Confideration of 120% bargain'd and fold the faid Reversion to the faid Libbe now Plaintiff in Fee, and effigued the Wast in digging of Clay, &c. The Defendant confess'd that William Hawe was seised of the said Land, and that he by the faid Indenture demised to Robert Garrard, and that he affign'd to the faid Elizabeth, prout, O'c. But the further said, that after the said 7 Day of May, in the said 30 Year, and before the faid Indenture of Bargain and Sale was enrolled, the faid William Hawe 15 Pasche in the said 30 Year levy'd a Fine of the Tenements aforelaid to the faid Richard Libbe now Plaintiff, come ceo, Oc. which Fine was to the Use of the said Plaintiff and his Heirs, after which Fine levied, scil. 29 Aprilis in the said 30 Year, the said Deed indented was enrolled in the faid Court of C. B. And further Def faid, that the never attorn'd; and upon this Plea the the Plaintiff demurr'd in Law, and in this Case two Points were moved. 1. If the Conusee of the Fine after the said Indenture enroll'd should be said in by the (b) Fine, or by the Bargain and Sale, for if he should be adjudg'd in by the Fine, no Action of Wast would lie for Want of Attornment; And if he should be in by the Indenture enrolled, then

there needed no (c) Attornment. And it was unanimously re-

folvd by Sir Edm. Ander fon and his Companions, Justices of the

(b) Cr. El. afr. atr. 6 Co. 68. a Co. Lic. 300. a 2 And. 386. F. N. B. 60 I. (c) 2 And. 386. Co. Lic. 300. b 331da 3C0.364 § Co. 113. b § Co. 94. a W. HYNDE's Cafe

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Common Pleas, That when Hawe by Deed indented bar-min'd and fold the Reversion to Libbe and his Heirs, and pefore the Inrollment levied a Fine to Libbe and his Heire and afterwards the Deed is inrolled within the fix Months, that the Conusee should be (a) in by the Fine, and not by (a) Mo 3570 198 the Indenture inrolled; for when the Fee simple passed by Hob. 222. the Fine to the Conusee and his Heirs, the Invollment of 2 Builtre the Deed indented afterwards could not devest and turn the Cr. El. 917 Estate out of himself, which was absolutely settled in him by Poph. 49. the Fine; for then where he was in before in the Per, he i Brownle the Per, he is Brownle the Per, he is Brownle to the Per, he the Fine; for then where he was in before in the Fer, he is And 27, 113, would be now in the Post. Also when the Common Law and 2 And 161.

Statute Law concurr, the Common Law shall be (b) prefer-Yelv. 124.

Owen 70. red: And it is true that the Involment shall have Relation 10 Co. 96. 20 to the Delivery of the Deed, but that is to (6) avoid mean (6) a lnk. 680, 680 Estates or Charges made to a Stranger by the Bargainor after 4 Inst. 140. the Delivery of the Deed, and before the Incolment, but not 2 Co. 35.b. to deven any Estate lawfully settl'd in the interim in the Bar-1 And 191gainee himself. And the Statute of 27 H. 8. c. 16. of Inrol- (c) Ho ments, fpeaks by Bargain and Sale only, and here it is not 2 Bulft. 34by Bargain and Sale only, but the Estate is passed originally owen 70. by the Fine. The other Point was, whether the Def. should be in this Case admitted to aver when the Deed was inroll'd, f. fuch a Day after the Fine levied, and before the Involment; and it was objected, 1. That in the Case at Bar it should be intended in Law, That the Deed was inroll'd the first Day of the faid Eafter Term, for the Term as to divers Purpofes is but one (d) Day in Law, and eo potins, because it doth (d) Godb. 433. not appear by the Record what Day of the Term the Deed's Co. 74 b. was enrolled, but generally Term' Pasch', and therefore it should be intended to be inroll'd the first Day of the Term. 2. It was objected, That Records (for the avoiding of Infiniteness, which the Law abhors) are so high and facred that they import in themselves inviolable Truth, which if any dare deny, the Law attributes fo great Honour and Credit to them that they shall be (e) try'd only (e) Co.35.2.22.2 by themselves, and not by the Country: But if this Aver-Lit. 260. 2.774. Co. nent should be suffer'd, then the Effect and Validity of the Record would be try'd by the Country, which would be against the Rule of Law. 3. It was objected, That it would be mischievous to allow of such nice Averments, and trench othe Disenherison of many to draw in question the Time of Il Involments of Bargains and Sales; for if the Beginning of the Term was within the 6 Months, and the End thereof fter the 6 Months, by such Averment after long Possession when Witnesses are dead, the Estate of the Land might be hawn in Quest, which would be a perilous and dangerous Pre-Ident, and especially in these Days in which Subornation of Perjury abounds: But it was resolved per tot' Curram, that the (f) Averment was good and lawful. And as to the 1 Ob-(f): And. 386. rue that it should be intended by Presumption in Law, that

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(f) 6 Co. 15. b. Doct. pla. 307, 305, 352 Hard. ob. 147, 156. o. Lit. 260. 2 2 Roll 575-2 Rol. Rep. 119.

the Deed was enrolled the 1st Day of the Term: But (4) Sia-bit prasumptio donec probetur in contrarium. And because the Plaintiff has by his (b) Demurrer confess'd the Intolment to be after the Fine, for this Caufe the Prefumption vanishes and becomes of no Force, and the mutual Consent and Confion of both Parties shall stand. As to the second Obie-Gion it was answer'd and resolv'd by the Court, That it is true that (c) Records import in themselves Truth, and conclude all Men from denying any thing appearing within (A) Cr. be. 431. 7 T 8 Eliz. Dyer 242. But to take (d) Averment which stands with the Record, and which doth not impugn any thing apparent within the Record, the Law doth well admit and allow: As against a Fine (e) upon Release, to say that the Conufee had nothing at the Time of the Fine levied, as it is held in 16 H. 7. 5. b. So against the King's Letters Patents under the Great Seal shewed in Court, none can deny them. but Non (f) concessit per prad' literas patentes, is a good Plea, for altho' there be fuch Letters Patents, yet perhaps nothing pais'd by them, and fo per consequens non concessit. And altho' (g) Involment, or other Matter of Record shall not be try'd per Pais, yet the Time when the Inrolment was made shall be try'd per Pais, for the Incolment itself shall never be drawn in Question (for that is agreed by both Parties) but only the Time of it, as in the other Case, where one pleads a Grant of the King by his Letters Patents under the Great Seal, and the other pleads non concessit by the same Letters Patents, in that Cafe the Letters Patents are confessed, but the Tryal small not be where the Letters Patents bear Date, Co. 15. b. fession is deny'd, it shall be try'd by the Spiritual Court, but (i) 2 Roll. 588. if the Time of the Profession is in Issue, it shall be try'd by but where the Lands (h) lie, as it was adjudg'd. So if (i) Pro-Jury, as it is held in 9 H.7. 2. As to the third Objection it was answer'd and resolv'd per totam Curiam, that if such Averment should not be admitted, great Injustice would be protected, and great Inconvenience ensue on the other Side; for suppose (as has been said) that the Beginning of the Term is only within the fix Months, and in Truth the Inrolment was towards the End out of the fix Months, if fuch Averment should not be receiv'd, the Bargainor would be difinher, against Truth and Justice, and no Inconven. can rife

on the other Side, for, for the Prefump. of the Law (as has been

mifest Truth thereof, for actori incumbit onus probandi: And as

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And the supplied that or expand Think a real ring but the

(1) Luch 157 faid) he who ftrives to avoid the Bargain, (k) ought to make

HYNDE's Cafe. o Fear of Perjury, (a) Nullum iniquum off in jure prefumen- (a) Hard 64 and these Days are not to be tainted with such Infamy ie of Abundance of Perjury, as has been furmised; and comto monly those who have most corrupt Consciences, are oftenes times most suspicious, and complain most of the Iniquity of nthe Times. 3. It was faid by some of the Justices, That if it be admitted that the Inrolment should be prefum'd to be (6)Mod Rep. 17 is made in Quindena Pascha, and that at the same Time the Fine Yelv. 123, 124 nd was also levy'd, that then the Bargainee should have (b) in lection to have the Reversion by the one, or by the other 159. 1 Jon m, But in Respect of the former Resolutions, this Point was not 2 And 2020 ds presolv'd by the Court. nd he it nts BOROUGHES's Cafe m, ea, Erveen Bereigher and Tay on the Cale was a Owen his Act Shoot ing al-HOS TOURS at the Receipt of the East yet at I found by fift at me be nut la live en feu Begeren af tre wich ide abail Continten ade to be vaid to Nomesme a of the Ren ; And afterward ver the Costs granted over the Prevention to another and his but Heire, and while her effective thought long oil the Rento ads take Astrona and the Condition was the Openion upon a eat Special Western, And it was general, that the Demand style ters to be made at the Receipt of the Endeque of the first of the thing but Pacha Pache bee of Necessian is professor to be deminded ore ate, there and not upon the Land; and strong the Revertion is rogranted over, ver right dies not alser the Place white the but Repr. mall Loyand ; Artific ranger l'actor makes a Leag of by his Maror of D. renaring Rena to be paid at his Magrel n is Sale, with Ucasalium to the apparent, and allaments Atrades ever the Reversion of the Manor of La, yet thether l be see ongar to demand his keen at the Manor of A. Andas ide; thought the first feet of memory but his memory for the comment the O. yet for unyed as it is for shoft main of the bellen had Inhe has blacked either to tay at at a certaine hace, or to the **fuch** Thomas nounteed one rolls, tom rolls were received any so d be (Seathanth Words are Averes of Agendance, for the (A) Law similar rife suct ditails them, although you exercise about brownering Conditions been here years to the the time be fitted and is there where the nake ad as Remosts the Law requires that the facetree twent to the April in Demonstrated the Land and the embere. 10 tore in a common leader maker a Lette ton Years of the Manor of I. soughly keeps at his Manor of Sala will Londing of Merangy, Francische nor prilatine liet

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## In the King's Bench.

#### BOROUGHES's Cafe.

Geuld 124 Cr. El. 462. Moor 404.

Etween Boroughes and Taylor the Case was; Queen Elisabeth made a Lease for Years rendring Rent payable at the Receipt of her Exchequer at Westminster, seu ad menus Ballivorum feu Receptorum, &c. with the usual Condition to be void for Nonpayment of the Rent; And afterward the Queen granted over the Reversion to another and his Heirs, and whether the Patentee should demand the Rent to take Advantage of the Condition was the Question upon a special Verdict. And it was mov'd, that the Demand ought to be made at the Receipt of the Excheq. for that is the certain Place appointed in the Leafe, and principally because Western added, and therefore of Necessity it ought to be demanded there and not upon the Land; and altho' the Reversion is granted over, yet that does not alter the Place where the Rent shall be paid; As if a common Person makes a Leased his Manor of D. rendring Rent to be paid at his Manord Sele, with Condition for Nonpayment, and afterwards he grants over the Reversion of the Manor of D. yet the Grant tee ought to demand his Rent at the Manor of S. And tho' it is further said, sen ad manus Ballivorum five Receptors Ge. yet forasmuch as it is for the Benefit of the Lessee, m he has Election either to pay it at a certain Place, or to the Bayliff or Receiver of the Leffor, and foral much as the fail Words are Words of Abundance, for the (a) Law implies them, altho' they were omitted, and because the Conditions here penal to the Leffee that he shall lose his Interest, for the Reasons the Law requires that the Patentee ought to make Demand upon the Land, and not elsewhere. And there fore if a common Person makes a Lease for Years of the Manor of D. rendring Rent at his Manor of Sale, will Condition of Re-entry, if the Rent be not paid at the Plan aforefaid

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aforesaid, or to the Hands of the Lessor himself, in that Case for the Reasons aforesaid, the Demand ought to be made at the Manor of Sale, and chiefly because the said Words are abundant, and no more than the Law without them would have implied, wherefore it was strongly urged and concluded, that in the Case at Bar the Demand ought to be made at Westminster, at the Place where the Receipt of the Queen's Exchequer is kept: But it was adjudged by Popham, C. J. Ciench, Gawdy and Fenner Justices, That in the faid Care the Demand ought to be made upon the (a) (a) Goldsb. 124. Land; And in this Case divers Points were resolved by El. 167, 415, the Court. 1. That if in Case of a common Person the 462. Co. Litt. Rent reserved upon the Demise be payable at a (b) Place out 76) Co. Lit. of the Land, that he who will take Advantage of a Con-153. 2. 202. 2. dition for Non-payment of such Rent, ought to demand 2 Roll. 459. the Rent at the Place where it is appointed to be paid; Cro. Car. 508; the Rent at the Place where it is appointed to be paid; 2 Jones 33: for the Limitation of the Payment of the Rent out of the Land, doth not alter the Nature or Quality of the Rent; nor of any Thing incident to it, but it is to all Intents a Rent issuing out of the Land, and not a Sum in gross; for it thall pass with the Reversion as incident to it, and shall be suspended by Entry of the Lessor into any Part of the Land leased, and shall be apportioned by Recovery of Part in Waft, or Entry into Part for Forfeiture, &c. and shall have all other Qualities of a Rent in the same Manner as if it had been payable upon the Land; And therefore the Opinion in Kidwelly's Case in Plow. Com. 70. that he in the Reversion may enter for non Payment of such Rent without any (c) Demand made, was utterly denied by the (c) Dyer est pli whole Court in this Gase; And the Justices said, that it had 23, 24, 329, pl oftentimes been adjudged to the cont. 2. When the Q. makes Leafe for Years rendring Rent with Condition ut supra, the Q. shall take Advantage of the Condition (d) without any Moor 210, 296 Demand; But when the grants the Reversion over, her Gran- 5 Co. 56. 2. b. tee thall not take Advantage of the Condition (e) without (e) Co:Litizonth Demand; for the Reason that the Q. shall take Advantage of the Condition without Demand was not in Respect of the Nature or Quality of the Rent, or that the Law adjudges hat such Rent reserved to the Q. was not omnino demandble, but that the Lessee in such Case ought to do the first Act, seither to pay or tender the Rent; for it was resolved by the Court, that as long as the Reversion and Rent contime in the Q. the Law dispences with the Demand as a Thing indecent and against the Dignity of the Quo attend upon her subject to make a Demand of him; Bur the Law (which al-Pays requires that Decorum and Conveniency be obset o'd) apoints the Subject to attend upon his Sovereign, and in fuch afe to do the first Act, altho' it be in Cafe of a Condition, which trenches to the Destruction of his Estate, but this is but personal Prerogative annexed to the Person of the K. and not i Respect of the Nature or Quality of the Rent; and therefore

SERVE BODS

(1) Co. Lit.

(6) § Co. 11. 2. 8 Co. 56 b. 145. 2. 10 Co. 39- 2. 11 Co. 60. 2. 1 Roll. Rep. 393. Latch 25. Palm. 435, 437. Wing. Max. 235. Co. Lit. 291. 2. 205. 2. Lit. Rep. 111. 2 Inft. 365. 2 Sand. 351. (c) Lit. Sect. 331. Co. Lit. 204. b. 1 Jones (d) 2 Roll. Rep. 393. Co. Lit. 191. 2. 2 Roll. 150.

Cro. El. 462. Co. Lit. 201.b (f) Co. Lit. 201. b. Hard.

Demand of it.

if he grants the Reversion over, the Grantee shall not take Advantage of the Condition without Demand made of the Rent. The 3 Point (the great Doubt of the Case) which was refolved, was, that in this Cafe the Patentee ought to (a) demand the Rent upon the Land; and their principal Reason was grounded upon a Rule in Law, f. That the Expression of a Clause which the Law implies, works nothing, (b) Expressio corum qua tacite insunt nihil operatur & expressa non profunt, que non expressa proderunt : And yet as (c) Lin. tleton faith, it is well done to put in fuch Clauses to declare p. 370.2 Roll- and express to Lay-men which have no Knowledge of the Law, what the Law requires in such Cases: As in 30 Aff. 8. a Lease is made to two for Term of their Lives, (this Clause being added and expressed, O dintins (d) corum viventi) and afterwards they made Partition, and one died, and he in the Reversion entred, and his Entry adjudged lawful notwithstanding the said Words, & diutius eorum viventi, for 2 Buiftr. 131. Withhanding the Hall's Case. 27 H. 8. tit. Office Br. 17. in Hards 92. Hob. 17 E. 2. 7. John Hull's Case. 27 H. 8. tit. Office Br. 17. in 17 E. 3. 7. John Hull's Case. 27 H. 8. tit. Office Br. 17. in Case of an Act of Parliament, 2 H. 7. 9. in Case of a Liberate, Plow. Com. 486 & 545. And it was resolv'd, that if the King makes a Leafe for Years rendring Rent, without appointing any Place, or to whose Hands it shall be paid the Lessee may by Law pay it either at the Receipt of the Exchequer, or to the Hands of the King's Bailiffs or Receivers which the King has authorised to such Purpole And therefore the special and usual Limitation of Payment (e) Goldsb. 124 of Rent in such Cases at the Receipt of the (e) Exchequer, or to the Hands of the King's Bailiffs or Receivers, & imports no more than the Law without it would have (f) implied, and therefore nihil operatur thereby; and although the said Clause is ad receptum Scaccarii, O'c. apud Westm', yet it being affirmative and declaratory, it is not necessary that the Receipt be held at Westm' for if the Receipt of the Exche-(c) Cro. El. 462. quer be held atanother (g) Place, the Rent is to be paid there; for as to this Point the Law would have implied that which is expressed. f. at Westm. and more, f. at whatsoever other Place the Receipt be kept: Then in the principal Case, il the Rent had been referved generally, the Patentee ought to have demanded it upon the Land, & per consequens fo ought it to be done in the Cafe at Bar. And it was faid as the Law has appointed the Receipt of the Exchequer to be the Place where the King's Revenues shall be received so in the Case of a common Person, the Law has appointed a Place where his Rent (if no other Place by mutual Agree

ment of the Parties be appointed) shall be paid, and that

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## Hill. 39 Regina ELIZABETHE, In the King's Bench.

#### PALMER's Case.

Retween Palmer Plaintiff, and Umphrey Defendant, in the Goldsb. 1773. Cro. El. King's Bench, it was refolved per totam Curiam, that 584. Styl. 62. D if a Fieri facias comes to the Sheriff to levy the Mo-Owen ney of the Goods and Chattels of the Defendant, and the 702. pl. 976. Sheriff by writing reciting that the Defendant has a Term for Years (and shews what) and supposing that it began 20 3 Phil. & Mar. (as it was in the Case at Bar) where in Truth the Term began 3 & 4 Phil. & Mar. fells the same Term, the Sale is void, for there is no fuch (a) Term; But not-(a) Cro. Can withflanding this false Recital, if the Sheriff Tells also all 399 the Interest which the Desendant has in the said Land (as allo in the Case at Bar he did) this Sale is good. And Popham Chief Justice said, in this very Court anno 26 Fl. between Sir George (b) Sydnam and Roller, the Cafe was (6) Goldsb. 1773 fuch; The Sheriff in the like Case reciting that Rolles had 173. Gro. El. a Term of a Parsonage pro termino diversorum annorum adtune ventur', fold it by Force of a Fieri facias to another, and it was adjudged good enough. For by common Intend-ment the Sheriff can't have precise Knowledge of the Certainty of the Beginning, and the Certainty of the End of the Term; But if he takes upon him to recite the Term and (c) mifrecites it and fells the same Term, it is void; (c) Godb. 433. but if he fells all the (d) Interest that the Defendant has (d) Goldsb. 1736 in the Land, it is good enough notwithstanding the Misre- Cro. El. 584 cital as is aforesaid. And so observe the Difference between the Sale of a Term, and an Extent of a Term, for accordingly it was adjudged M. 32 & 33 Eliz. in Scaccario, that where it was found by Inquisition that the Queen's (e) (e) 2 Leon. Debtor was possessed of certain Lands pro Termino quo- 121. 3 Leon. 204. rundam annorum adunc ventur that this Inquisition was insufficient, for a Term cannot be extended without

thewing the Beginning and Certainty of the Term, and the Reason is this, because after the Debt satisfied, the Party is

to have his Term again, if any Part of it remains, which ought to appear, and thereupon the Party may have Remedy to remove the Hands of the Queen or other Person: But in the Case of a Sale upon the Fieri facias, the Sheriff may fell all the Interest or Term which the Defendant has in such Land, and never mention it in his Return, but generally, quod ficri fecit de bonis & catallis, &c. But if the Execution in the principal Case should be levied, it wou'd tend to the Ruin of a poor Man who made great Complaint to the Court; the Attorney-General coming into the Court at the Request of the poor Man perused the Record, and thereby found that the Execution was by Force of an Elegit, which ought to be made by Inquifition, for the Statute of Westm. 2. cap. 18. which gives the Elegit, provides, Quod Vicceom' liberet ei omnia catalla, Oc. O medietatem terra sua, quousque debitum fuerit levatum per rationabile pretium (which refers to Chattels) & extentum, which refers to Land, and rationabile pretium, and Extent ought to be found by (a) Inquisition and Verdict, for that (a) Cro. El. 584. Cro. Jac. 569. Antea 67. 2. 2 Inft. 396. Dyer is implied in Law, and the Court as the Law appoints, altho' it be not so expressed, vide 10 E. 4. 11. 7 R. 2. Barr 241. (b) Proof is intended Trial by Verdict, and the Words of the Writ of Elegit are according to the faid Statute, and therewith agrees 2 Mar. (c) Dyer 100. that the Extent and (b) Hob. 23, 217. Apprisement ought to be per facramentum duodecim, and not by the Sheriff, and many Precedents: And because the Cro. 186. 188, Term was mistaken in the Inquisition, and the Term so mistaken was apprised by it, and the Sheriff could not sell so. 2 Brownl. any Torm but that only which was apprised by the Jurors 232. 261. 2 Rol. any Torm but that only which was apprised by the Jurors 253. 181. pl. any Torm but that only which was apprised by the Jurors 253. 181. pl. faid Sale was utterly void, and so was the Opinion of the sale whole Court; And Judgment given accordingly. 241. (b) Proof is intended Trial by Verdict, and the Words of the Writ of Elegit are according to the faid Statute, and therewith agrees 2 Mar. (c) Dyer 100, that the Extent and

1250. Perk.
Sect. 791. 3 Inft. 68. Br. Condition 151. (c) Goldsb. 173. Cro. El. 584, 735. Dyer 100. pl. 71.
2 Inft. 396.2 Bul. 97.

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### Trin. 39 Regina ELIZABETHA, In the King's Bench.

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#### HOLLAND's Cafe.

Villiam Armiger was Plaintiff in a Prohibition a-Moor 542, 543, gainst William Holland Parson of Northcreak in Cro. El 601. the County of Norfolk, and declared, That Man-Hob. 156. thew Bishop of Canterbury collated by Laps John Meye to 2 Brownl. 40 the faid Church of Northereak, who was therein inducted, 453. and further had the Moiety of the Church of Darsfield in the County of York, and afterwards 17 Augusti anno 19 El. he was nominated and elected to be Bilhop of Carlifle; after which Election, and before Confecration and Infallation into the faid Bishoprick, scil. 18 Augusti anno 19 Eliz. the the Queen by her Letters Patents, De gratia fua Speciali, ac ex certa fcientia, O mero motu suis concessit, & licentiam O potostatem dedit prafat' J. Meye, quod ipse in ipsam Ecclesa Cathedralis Carl' consecrat' procuret & obtineret; Neonon obtinere, O nihilomiuus prad' medietat' dicta Rector' de Darffield, ac Rectoriam de Northcreak, una cum dicto Episc', quamdiu eidem Episcopat' praesset, retinere O possid', ac fructus & emolumenta inde quamdiu eidem Episc' praesset in suos proprios usus convertere, &c. And afterwards 20 Sept' anno 19 Eliz. the faid John Meye was consecrated and installed into the said Bishoprick, and was and yet is Bishop of the same See; And the Pl. claimed a Lease for Years in the said Rectory of Northcreak by Force of a Demise made by Indenture by the faid Bishop I Mais anno 20 Eliz. for a Term of Years yet enduring; and that the Defendant being now lately prelented by Laps by the Queen, presending the faid Letters Patents of the Queen made to the faid Jo. Meye were void, fued for Tithes in the Spiritual Court, Or. And the Det. pro Confultatione babenda faid, That the faid Church of Northereak at the Time of the Induction of the said 7. Meye was and yet is Benefic' cum cura animarum, & uliva, annum valorem 81. viz. 81. 10 s. And afrerwards the faid 7; Meye (a) accepted the Moiety of the faid Church of Dars. (a) 1886 a and was instituted and inducted thereto, and the Pleading was,

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(c) Moor 542. Cro. El. 601. Cro. Car. 357, 496. Heth. 125. Lit. Rep. 239. Co. Lit. 120. 2. 2 Rol. 352. Dr. & Stud. Lib. 2. cap. 34, F. N.B. 34. L. 4 Jones 404. 2 Brownl. 166. (d) P. N. B. 35. H. Poftes 79. b. 6 Co. 39. b. Geldsb. 141.

ad (a) medietat' Rectoria, where it should be ad Rector' medietolis, Oc. (but the Court took it to be all one in Effect) and that the said Church of D. fuit Beneficium cum cura animarum, and confessed the said Letters Patents prout; and concluded that pratextu pramissorum, the Church of Northereak became void, and Title to prefent by Laps devolv'd to the Queen, who presented the Def. to it 15 Feb. 1592, and made no Mention of the Act of (b) 21 H. 8, cap. 13. in his Plea; (6) Dav. 60. 2. no Mention of the Act of (b) 21 H. 8, cap. 13. in his Plea; Postea 78. b.

89. b. 2 Brownl. and upon this Plea the Pl. demurr'd in Law. And in this Case two Points were resolved. 1. That before the Statute of 21 H. 8. cap, 13. if one had a Benefice with Cure, and accepted another Benefice with Cure, that the first Beneace was (c) void, but it was not an Avoidance by the Common Law, but by the Constitution of the Pope, of which Avoidance the Patron might take Notice if he would, and might present if he would without any Deprivation; but because the Avoidance accrued by the Ecclesiaftical Law, no Laps incur'd without (d) Notice, as upon Deprivation or Refignation, and yet the Patron might prefent, and take 455 46. upon him Notice if he would; so that for the Benefit of Vangh. 31. Hob. the Patron the Church is void in the principal Case, but not for his Disadvantage: And according to this Difference it is adjudged in Hill. 24 E. 3. 33. that in a Quare impedit brought by the King against the Bishop of Worcester, it was a good Title for the King that the Predecessor of the Bishop presented to the same Church one A. who afterwards accepted another Benefice, by which Acceptance the Church in Question was void, and remained void till the Temporalities of the Bishop came to the King's Hands, and to it belonged to him, or. And the King upon this Title by Award of the Court had a Writ to the Bishop, which proves that Ch. was void in Fact without any Deprivation, to which the K. might by Law present his Clerk; and there-(e) Pofter 79 : with agree the Books in 9 (e) E. 3. 22. a. 10 E. 3. 1. 14 H.7. 28. b. 14 H. 8. 17. a. F. N. B. 34. l. Et dictum eft in 10 E. 3. 1. that in such Cases both Churches shall be void, and by Parning the Constitution of Plurality is a general Judgment, that all shall be deprived who hold many Benefices with Cure above one Month after the Constitution, which binds stronger against them upon their Privation than particular Judgment of a certain Person, for a particular Deprivation may be avoided by Appeal, and the other not. But some Opinions are in 5 E. 3. 9. 6 11 H. 4. 37. that the Church is not void without Deprivation; but that may be under-

stood for the Disadvantage of the Patron, but for his Ad-

vantage it is void as is aforefaid, and so all the Books are well reconciled, fo that the Statute of 21 H. 8. is in this Point but a Confirmation and Affurance of the Law be-

per Ann. the Patron at his (f) Peril ought to present to it,

fore: But now for as much as it is affirmed by Act of Parliament, if the first Benefice be of the Value of B L

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for in as much as to an Avoidance by Parliament every one is Party, every one ought to take Notice of it at his ril, but otherwise if the first Church be not of the yearly Value of 8 1. for then it is void meerly by the Ecclefiastical Law, whereof the Patron need not take Notice at his Peril as is afore-said. 2. It was resolved per to. Cur. that the faid Act of (a) 21 H. 8. was fuch a general Act that the (a) Moor 142. ludges (although it be not fet forth in Pleading by the Doct. pla. 337. Party) ought to take Notice of it ex officio. Nota Reader, the Yelv. 106.
Rule of the Law is, That of general Statutes the Judges 2 Rolls 466. ought to take Notice, altho' they be not pleaded, otherwife of special or particular Statutes: And for the better Understanding of your Books in this Point, and which shall be said in Judgment of Law Statutum generale, and which is Statutum Speciale, it is to be known, that generale (1) Dod. pla (b) dicitur a genere, & Speciale a Specie; And there are Ge- 336. nue, Species, O' Individua; Know that Spirituality is Genus, Bishoprick, Deancry, Oc. are Species, and Bishoprick or Deanery of Norwich, Individuum, sie diet' quia in (c) partes (c) Doc. pl. 356. dividi nequit. And therefore it was resolved in the Case at Bar, that forasmuch as the Act of 21 H. 8. concerns the whole Spirituality in general, it was a general Act whereof the Judges ought to take Notice. And Pasch. 31 Eliz. Rot. 514 it was adjudged between Claypool (d) and Carter in (d) Poles 120.b. C. B. and affirmed by Writ of Error in B. R. Hill. 32 Eliz. 1 Leon 306.
RM. 791. that the Act of 18 E. c. 6. concerning Colleges in Doct. pla. 337. the two Universities, and the Colleges of Eaton and Win- 1 And. 248, 2492 cheffer was a particular Act whereof the Judges shall not take & Notice. But the Statute of (e) 13 Eliz. cap. 10. and 18 E. Yelv. 106. cap. 11. concerning Colleges, Deans and Chapters, Hospi-2 Roll. 465. tals, Parson, Vicar, or any other having any Spiritual or Ec-Noy 124.

defastical Living, are general Acts, whereof the Judges shall 2 Brownl. 208.

defastical Living, are general Acts, whereof the Judges shall 2 Brownl. 208. take Notice, which Case is like the Case at the Bar. But 205. it was adjudged Trin. 30 Eliz. in B. R. between Elmer Bishop of London and Gate, for the Scite and Demesns of the Manor of Draiton in the County of Midd'; that the Statute of Mod. Rep. 205.

(f) 1 Elis. concerning Leafes, &c. made by Bishops was Lit. Rep. 306.

1 pecial Act because it concerned the Bishops only, who are 5 Co. 2. a. Cr. but Species of the Spirituality, and therefore of such special Jac- 112 Law the Judges shall not take Conusance if it be not pleaded, and therewith agrees 13 E. 4. 8. b. & fic de fimilibus:
So this Word (Officer) is a general Word or Genus, (Sheriff) 152 special Word or Species; and Sheriff of Norf. is Individuant: And theref. the Stat. of W. 1. 6. 26. (g) by which it is enacted, (3) Dod. pl.; that no Sheriff, nor other the K's Officer, take any Reward to do bis L4

HOLLAND'S Cafe. PART IV Office, but shall be paid of that which they take of the King, is a general Act, because it extends to Officers in genere: (a) Plowd. 65 2 But the Statute of (a) 23 H. 6. cap. 10. which extends only to Sheriffs, is but a particular and special Act, as it is held 3 Ma. Dyer 119. a. So Mystery or Trade is a general Word, Trade of Grocery is special, and this Grocer by Name is Individuum: And therefore Aers of Parliament concerning 1 Ven. 85. Mysteries or Trades are general Acts; But an Act of Par-(6) Doct. pl. 337. Dyer 27. pl. 179. liament concerning the Trade of (b) Grocery is a special Act, as it is faid 28 H. 8. Dyer 27. because the Trade of Grocers contains under it but Individua, or fingular Perfons, as this or that Grocer by Name, vide to E. 4.7. a. The (c) Dod. pla. Statute of Marlebridge cap. 3. Non (c) ideo puniatur Dominus per redemptionem, is a general Law for the Reasons afore. faid, for this Word Seignior is a general Word. But an Act concerning all the Nobility, (d) or Lords of the Par-(d) Dod p. liament, or all the Bithops of England, or all Corporations made by King H. 6. are special and particular Acts for the Causes aforesaid, as it is held in the Case of the Lord Say in 13 E. 4. 8. b. Know Reader, if an Act is special whichertends ad species; a multo fortiori, it is special or particular (e) 5 Co. 5. b. Br. Parliam. which extends ad individua: Vide (e) 14 E.4. I. a. & 43 (f) Cf) 5 Co. 5. b. Br. Parl 35 All. 29. So observe what Act as to Persons is general, and what not. Now know, that altho' the Matter is special, so that under it there are but individua, yet if it is general as to Persons, thereof the Judges shall take Conusance: but if the Act concerns aliqued fingulare feu individuum, altho it is general as to Persons, yet the Judges shall not take Conufance thereof: As Appeal is a special Action, and contained (g)Doct. pla. under this general Word Writ; and yet the Statute of Magna Charta cap. 34. which concerns (g) Appeals is ge-(b) Dock. pl.338. neral, and the Judges ought to take Notice thereof, as it is held in 10 E. 4.7. a. But if an Act was made that no (b) Appeal shall be brought of the Death of J. S. this Act is Ci) Doc. plasses particular, Causa qua supra: So the Act of Magna Charle cap. 25. of Waft, (i) W. 2. cap. 25. concerning Affises, 6 cap. 18. concerning Affife by Tenant by Elegit, cap. 41. concerning contra formam collationis; 23 H. 8. of Attaint fimilia, are general Laws altho' they concern special Actions; (1) Dod pla. the fame Law 4 H. 7. cap. 17. and Merion, cap. 6. of (1) Wards, & fic de cateris: But altho' the Act as to Persons is go (1) Dog. pla.338. neral, but the Matter thereof concerns Individ, or fingula

Things, as any (1) particular Manor, or House, &c. or all the Manors, Houses, &c. which are in one or fundry particular Towns, or in one or divers particular Counties, these are such particular Acts whereof the Judges shall not take Conusance,

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if they be not pleaded or alledged by the Party; But of every Act (altho' the Matter thereof concerns Individua, or Hob. 226 D fingular Things, yet) if they touch the King, the Judges ex gla 338, 338 officio ought to take Conusance, for every Subject has Inte-138, b. eft in the King as in the Head of the Commonwealth, 13. 4. P and as the inferiour Members can't effrange themselves from 168. Jer the Actions and Passions of the Head, no less can any Sub- Cent. 215. jest estrange himself from any Thing which touches or concerns the King their supreme Head. Vide Plow. Com. in the Lord Barkley's Cafe. Vide for these Matters, 21 E. 4.59. a: 37 H. 6. 15. & Plow. Com. in Wimbish's Case 53. And Tanfield. Godfrey, and others were of Counsel with the Pl. and Coke and Houghton with the Defendant.

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#### The Case of Corporations.

N this Term at Serjeant's Inn in Fleetstreet it was demanded of the Chief Justices Popham and Anderson, Perism Chief Baron, and the other Justices, That where divers Cities, Boroughs, and Towns are incorporated by Charters, some by the Name of Mayor and Comminalty, or Mayor and Burgesses, &c. or Bailiss and Burgesses, &c. or Aldermen and Burgesses, Oc. or Provost, or Reve and Burgesses, or the like. And in the said Charters it is prescribed, That the Mayors, Bailiffs, Aldermen, Provofts, Oc. shall be chosen by the Comminalty or Burgesses, Oc. If the ancient and usual Elections of Mayors, Bailiffs, Provolts, &c by certain selected Number of the Principal of Comminalty, or Burgesses, commonly call'd the Common Counsel, or by fuch like Name, and not in general by the whole Comminalty or Burgesses, nor by so many of them as would come to the Election were good in Law, for as much as by the Words of Charters the Election should be indefinitely by the Comminalty, or by the Burgesses, which is as much as to fay by all the Comminalty or all the Burgesses, &c. Which Question being of great Importance and Consequence, was referred by the Lords of the Council to the Justices to know the Law in this Case, because divers Attempts were of late in divers Corporations contrary to the ancient Usage to make popular Elections: And it was refolved by the Juffices upon great Deliberation and Conference had amongst themselves, That such ancient and usual Elections were good and well warranted by their Charters, and by the Law also; for in every of their Chart. they

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have Power given them to make Laws, Ordinances, and Jenk Com 273 Constitutions for the better Government and Order of their Cities or Boroughs, &c. by Force of which, and for avoiding of popular Confusion, they by their common Affent confitute and ordain, That the Mayor or Bayliffs or other principal Officers shall be elected by a selected Number of the principal of the Comminalry or of the Burgesses as is aforefaid, and prescribe also how such selected Number shall be chosen, and such Ordinance and Constitution was resolv'd to be good and allowable, and agreeable with the Law and their Charters for avoiding of popular Disorder and Confufion: And altho' now fuch Constitution or Ordinance can't be shew'd, yet it shall be presum'd and intended in Respect of such special Manner of ancient and continual Election (which special Election could not begin without common Consent) that at first such Ordinance or Constitution was made, fuch reverend Respect the Law attributes to ancient and continual Allowance and Usage, altho' it began within Time of Memory : Mos retinendus eft fidelissima vetuftatis ; que preter consuetudinem & morem majorum fiunt, neque placent, neque recta videntur; & frequentia actus multum operatur. And scording to this Resolution the ancient and continual Usages have been in London, Norwich, and other ancient Cities and Corporations, and God forbid that they should be now innovated or altered, for many and great Inconveniences will thereupon arise, all which the Law has well prevented, as appears by this Resolution. / Carlo

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# Hill. 41 ELIZABETHE. Regina. In the King's-Bench.

### DYGBY's Cafe.

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Etween Richard Robins Plaintiff in Ejectione firma for Par cel of the Glebe of the Rectory of Horton in comital Lincoln, on a Demise made to him by Edward Wickham Parson there, and William Gerrard and John Prince Defen dants; upon Not guilty pleaded, the Jurors gave a special Verdict to this Effect; (which Action began in the Kingi Bench Hill. 38 Eliz. Rot. 781.) The faid Rectory of Horse is a Benefice with Cure, and of the annual Value of 81. 0 amplius, to which (the Church being void) George Digit Efg; Patron thereof did present Robert Merick his Clerk, wh at his Presentment was admitted, instituted and inducted And afterwards Queen Elizabeth anno regni sui 29, presentathe said Merick to the Church of Stanes in the County Middle fex, which is a Benefice with Cure; to which Church of Stanes the faid Merick was admitted and inftituted, before Induction Catherine the late Wife of the Lord & roughe admitted and receiv'd by Writing under her Sealth faid Merick to be her Domestick Chaplain according to (a) Antes 75. b. Form of the Statute 21 H. 8. (a) And afterwards the And at H. 8, cap. 13. bishop of Canterbury by his Letters of Dispensation; C codem Rob. Merick, ut una cum Rectoria de Horton dioces. La coln' quam adtunc obtinuit, Ecclesiam de Stanes dioces. Long bepere, & quoad vixerit retinere libere & licite valeat, & pl authoritate Parliamenti gratiofe dispensavit: And aftermit the Q. by her Letters Patents under the Great Seal ratify'da confirm'd the faid Letters of Dispensation: And afterwal the faid R. M. was inducted in the faid Church of Stanes," 30 Aug. enno 29 El. And afterwards the Q. by Laps anno! prefept

presented the faid F.d. Wickman to the Church of Horton, who was admitted, instituted, and industed, and demised to the Pl. upon whom the Defts' as Servants of the faid Rob. Merick enter'd and ejected him; and if they were guilty or not was the Question: And it was adjudg'd for the Pl. that the said (s) Dispensation came too late, because it came after the In- (a) Jenk. Cent. hitution, for by the Institution Ecclefia plena et confulta existit Goldtb. 16 against all Persons but against the K. And it is to be known, Mo.12 Latch.32. that every Rectory consists upon Spirituality and Temporali- Hob. 158. ty; and as to the Spirituality, f. Cura animar', he is compleat Parson by the Institution; for when the Bishop upon Examination found, admits him able, then he institutes him, and fays, Inflituo te ad tale beneficium & habere cur' animar' of fuch (b) Co.Lit.344.2; 2 Parish, & (c) accipe cur' tuam & meam, &c. Vide 33 H. 6. 13. (c) 1 Siders. 427. But as to the Temporalities, (d) as the Glebe Land, &c. (d) 1 Inft- 356 he has no Freehold in that 'till Induction, vide Hare & Buckley's Cafe. P. Com. 528. And for the better understanding of our Books, know Reader, Qd' per generale Concilium \* Lateranense . 1 Palm. 349. tentum sub Innocentio Papa tertio ; Statut' est qd' quicunq; reciper' aliqued benefic' habens cur' animar' annex', fi prius tale benefic' obtinebat, co sit jure ipso (e) privatus, & si forte illud retinere con- (e) 2 Rolls 360, tenderit, alio etiam spolietur; Is quoque ad quem prioris spectat 361. donatio, illud post receptation' alterius conferat cui merito viderit conferend', and this Council was held anno Dom' 1215. vide Tom. 4. 221. c. 29. de Multa: by which it appears that by the Acceptance of the (f) second Benefice, the first is void ip fo (f) Cr. Car. 357. jue, and the Patron may present if he will: And upon this 2 Rolls 360, 561. general Council are the Books in (g) 9 E. 3. 22. 4. 10 E. 3. 1. (c) Antea 75. b. (where the faid general Council is mention'd) 24 E. 3. 30. 4. 11 H. 4. 37. 14 H. 7. 28. 14 H. 8. 17. F. N. B. 34. l. grounded. But now what shall be call'd an Acceptance of a second Benefice with Cure within the faid Act of (h) 21 H. 8. is the (h) 21 H. 8.c. 15. Question; and the Doubt arises upon this, That altho' Merick by his Institution was Parson as to the Spirituality, s. to celebrate Divine Service and Sacraments, to preach and instruct his Parishioners in the true Faith, yet he is not compleat Parson, for he wants his Temporalities whereof he may live 'till Induction, and therefore he is not compleat Parson 'till Induction, and the Statute is to be intended of a compleat Parson. 2. It was objected, that altho' he shall be said compleat Parson before Induction, yet he has not a enefice with Cure 'till he is inducted; for this Word (Benefice) as it was faid, implies Profit and Benefit, which he annot have 'till Induction; and he who has Beneficium ought o execute and facere officium, but none can do his Office without some Benefit. 3. It was objected, that the said Act of H. 8. doth not make the first Benefice void 'till Induction, for the Words are, and be inflituted and inducted in the Possession

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of the fame, erc. But it was refolved, that great Inconveni ould enfue, if the first Benefice should not be void by Infliturion to the 2 Benefice, by Force of the faid Conflitute for then one might be inflituted to divers Benefices with C the great Cure and Charge of which one could not discharge and yet no other could be presented to any of them whi would be inconvenient; and therefore vide Tomo 3. General Concilior pag. 368. cap. 64. Res ipfo loquitur plura Beneficien tissemum quibus enimerum cur' submisse est, non sine gri Ecclesserum damno ab uno obtineri, cum unas in pluribus Eu non fine gre his rise officia perfolvere, ant rebus carum nece fariam curam pendere nequeat; whereby it appears that the great Mischie before the faid Council was, that those who had Pluraling Benefices, could not discharge their Pastoral Duties which long'd to their Functions, which Functions they had to all tents by the Institution before Induction: And in Judgme of our Law, he who is inflituted to a Benefice has accepted for the Church is full by the Inflitution before any Induction 2. It has been now lately adjudg'd in the Common Pleas, the (a) Co.Lir.344.2 where a Clerk was presented, (a) admitted and instituted fanc so.

a Benefice with Cure above the Value of 81. and afterwin and before Induction to the first, he accepted another Bendi with Cure, and is inducted to it, that the first is void by Statute of 21 H. 8. for the Words of the Act are, If any Per (b) having one Benefice with Cure, Oc. accept and take another Oc. and he who is inflituted to a Benefice, is faid in Law have accepted a Benefice, and to have a Benefice. And ham C. J. faid, That altho' by the Institution to 2 Benefit the first is void by the Ecclesiastical Law without any D privation, or Sentence declaratory, yet no Laps shall in against the Patron, unless (c) Notice be given him, nom than if the Church became void by Refignation or Private and yet the (4) Patron may take Notice if he will, and present according to the faid Conflictation, but he is not for to take Notice at his Peril, unless he is Inducted: Qual concess per tot Cur'. And then forasmuch as the Avoidance ter Induction is declar'd by the Act of 21 H. 8. (to (e) wh every one is Party) there he ought in fuch Cafe to Notice at his Peril: But admitting that the first Church not void de facto by the Institution 'till the Induction, ye another Cause the Dispensation made comes to late, for

> Words of the Act of 21 H. 8. are, May perchase Licentell ceive and keep two Benefices with Gure of Souls, and the Wo of the Dispensation in the Case at Bar are reciper' or rein; forafmuch as by his Institution, the Church was full of him could not purchase Licence to receive that which he had be and the Words are in the Conjunctive recip' & retin', fo that

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(e) Amea 75. b. Dyer 327. pl. 7. 6 Co. 29. b. Cr. Car. 357.

(e) Antes 76. 2. Doct. pl. 337 2 Rolls 466.

DYGBY's Cafe.

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ould not retain that which he could not receive. And it are nears by the faid Judgment in Communi Banco, that within the aid Act of 21 H. 8: he who is only instituted is said to have Benefice with Cure; and the Question as to this Point was sked of the other Justices and Barons of the Exchequer, and they all agreed, That the Dispensation in the Case at Bar rame too late for the Reasons aforesaid. And the Attorney Gmeral, Tanfield, and Francis Moor were of Counsel with the Plaintiff, and George Crook, Lawton and others with the De-

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# Trin. 41 ELIZABETHE Regina.

### NOKES's Cafe.

Etween Nokes Plaintiff, and James Defendant, in Debt

Cr. El. 674, 675. a Brownil. 213. Cr. Car. 176.

on a Bond, the Case was such: The Defendant demifed to the Plaintiff an House in London by these Words, Demife, Grant, &c. and the Lessor covenanted that the Lesfee should enjoy the House during the Term without Eviction by the Lessor, or any claiming under him, and the Lessor was bound to perform all Covenants, Grants, Articles, and Agreements, &c. in the Indenture: The Plaintiff granted his Term over to a Stranger, in Debt upon this Bond, the Defendant pleaded Performance of the Covenants, Oc. The Plaintiff assign'd the Breach, that one Savery enter'd upon the Assignee, and made a Lease for seven Years to one Ducke, if he should so long live, who brought Ejectione firme against the Affignee, and recover'd by Verdict, and had Execution; upon which the Defendant demur'd in Law. And the Opinion of the Court was against the Plaintiff; And in this Case these Points were resolv'd: 1. That for this Covenant Vaugh. 126. in (a) Law upon these Words, demise, (b) grant, &c. the d. 447. (c) Assignee shall have a Writ of Covenant, 9 Eliz. Dyer 257. agrees. 2. That for this Breach of the Covenant in \* Law, the Bond was forfeited, for he was bound to perform all Co venants, Grants, &c. which extends as well to Covenantsin Law, as to Covenants in Deed. 3. Altho' the Recovery was by Verdict, yet the Plaintiff ought to have shew'd that Sa lac. 71, 214 very had (d) ancient Title, for otherwise the Covenant in Law was not broken, and because he did not shew that, for this Reason they resolv'd against the Plaintiff. 4. It was held

by Popham C. J. & totam Curiam, That the faid express Cove-

nant (e) qualify'd the Generality of the Covenant in Law, and restrain'd it by the mutual Consent of both Parties, that it should not extend further than the express Covenant, Quis clausula (f) general' non refert' ad express a in this Case. And so

aBrownl. 14,215 Dyer 57. 2. (b) 5 Co. 17. 2. 25 H. 8. Br. Covenant 32. 2 Co. 63. 2. E. N. B. 146. c. (c) Cr. El. 809. Yelv. 175. Cr. Jac. 71, 234. Cr. El. 674.675. (d) 2 Rol. Rep. 6, 28, 287. 2Brownl. 214. Cr. El. 675. Hob. 35. Doct. pla. 86. Vaugh. 122. Cr. Jac. 315. Palm. 339. Mgor 861.

Winch. 92,93.
Winch. 92,93.
1 Elv. 175. I Buift. 3, 4. 2 Brownl. 212, 213, 214. Cr. Jac. 234. Cr. El. 864. 1 Sid. 318. 1 Saund. 66.
1 Elv. 175. I Buift. 3, 4. 2 Brownl. 212, 213, 214. Cr. Jac. 234. Cr. El. 864. 1 Sid. 318. 1 Saund. 66.
1 Etc. Rep. 64, 206. Vaugh. 126. Raym. 46. Co. Lit. 384. 2. (1) Antea 73. b. Lit. Rep. 345.

orther binds himself and his Heirs to Warranty, here the express Warranty doth not toll the Warranty in Law, for if e in the Reversion grants over his Reversion, and the Lef-e attorns, and afterwards is impleaded, he may (c) vouch (c) Co.Lington the Grantee by the Warranty in Law, or he may vouch the Lessor by the express Warranty; and therewith agrees 31 E. 3. Voucher 289. (d) where the Cafe was, L. seised of 3 Oxegangs (d) Cr. El ers of Land leafed by Deed to C. for Life, rendring Rent and Services, and bound himself and his Heirs to Warranty, Oc. and afterwards granted the Reversion to one R. Oc. L. dy'd, his Wife brought a Writ of Dower against C. who vouch'd the Heir of L. by Force of the express Warranty. And there Howard C. J. faid, if the had two Warranties, the may choose which she will; but Nota, in both the faid Cases the Warrany in Law and the express Warranty were general. And I rd the Lord Dyer, and the whole Court of Common Pleas. 14 Reg. El. resolve, That if a Man makes a Feoffment by ed by this Word (e) Dedi, and with express Warranty in (e) Lit. Rep. 64. Deed, he may use the one or the other at his Election. Co. Lir. 384

that the Statute de Bigamis, cap. 6. is to be intended,

(f) Dedi imports a Warranty, altho' the Clause of War- 276. 6H. 7. 2. a.

be not contain'd in the Deed. The Letter of which Dal. 101. 35. ute is, (g) In chartis ubi continetur dedi & concessi, &c. Cr. El. 861.
deulula warrantia, ipse feoffator in vita sua, &c. fine war-1 Co. 2.b. sufula warrantia, ipse feoffator in vita sua, &c. fine war- 1 Co. 2. b oc. id est quamvis nullum continet clausulam warrantia, 5 Co. 17. 2.
warrantizare: But Nota by Force of the said Act Perk. Sect. 124. Dedi is made an express Warranty during the Life of Pref. Rolls Abra feoffor: And there is great Reason in the principal Case, page 7. the particular Covenant subsequent, should qualify the al Force of this Word demis, for otherwise the particuvenant would be in vain, if the Force of this Word

are frequent in every ordinary Leafe that is made; and 1 Vent. 44.

Left (i) Construction of Deeds is to make one Part of the Cr 12c. 73.

Lexpound the other, and so to make all the Parts agree, & Cr. El. 214.

Leri possit according to the true Intent and Meaning of (i) Lit. Rep. 187.

Latties, vide 48 E. 3. 2. If a Man makes a Lease for Life Co. Lit. 314.

Word Dedi, and afterwards grants over the Reversion, for shall be youch'd by Force of the Dedi. Lib. 1. 2. b.

f thould fland; and also these Words (h) demiss & con-(b) 1 Sid. 430

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### Mich. 41 & 42 Regina Eliz. In the Court of Wards.

### Sir ANDREW CORBET's Cafe.

Bulft.252. I Jones 25. I Vent. 202. a-Rolls Rep.

SIR Andrew Corbet Knight, 16 Eliz. seised of divers Manors, Lands, and Tenements in Fee, Part of which was held of the Queen by Knights Service in Capite, by his Will in writing devised some of them to Richard Corbet and others to have and hold to them and the Survivor of them until fuch Time and Term as the Sum of 800% by them or the Survivor of them, or the Executors of the Survivor of them, of the Issues, Rents, Revenues, and Profits of the faid Lands should be fully levied and receiv'd above all Charges and Expences; and the faid Sum so levied to be employ'd for the Preferment of his two Daughters Margaret and Mary, as in this Will is limited, and left a third Part to descend. The faid Sir Andrew anno 20 Eliz. dy'd, Robert Corbet his Son and Heir took the said Will into his Hands, and entred into the faid Lands now in Charge, and received the Profits thereof during his Life, and afterwards dy'd in anno 25 Eliz. after whose Death, upon the Search of Evidences the said Will was found at Morton Corbet, which Will was found in the Office after the Death of the faid Robert, and then transcrib'd into this Court; by Virtue of which Will the faid Rich. Corbet the Devicee enter'd and hath receiv'd the Profits of the faid Land from the Feast of St. Michael anno 26 Eliz. until the Feast of the Annunciation anno 36 Eliz. and by such Time had levied 640 l. and had employ'd it according to the Will; and if the Profits taken by Rob. Corbet, and which the Devisees might have taken, should be accounted Parcel of the faid Sum of 800 1. was the Question : And in this Case 2 Points were refolv'd. 1. That altho' the Words are until the Sum

PART IV. Sir ANDREW CORBET's Cafe.

of 800 1. shall be levied by them of the Profits of the Land; yet. it is as much in Law, as if the Words had been, shall or (a) (a) Catter773783 may be levied; and so it was held in Case of a Lease, (b) Moor 556. where the Limitation of an Use until such Sum shall be le-Bridgm. 82. vy'd, is as much as to fay until fuch Sum can be levy'd, for Cr. El. otherwise great Mischief would ensue; for inasmuch as he in (6) Bridg Reversion or Remainder can't enter 'till the Sum is levy'd, it would be in the Power of them who are appointed to levy the Sum, if they would defer the levying thereof, to exclude him in the Reversion or Remainder, from taking the Profits. of the Land for ever, which would be inconvenient: So it was agreed upon the Words of W. 2. cap. 18. Quod (by Force of the Elegit which is given by the same Statute) vicecomes liberet, &c. medietatem terra sua quousq; (c) debitum fuerit levat' (c) Bridem. 45 per rationab' extent'; And upon the Words of the Writ of Cart. 775 Execution of a Statute Merchant and (d) Staple, omnia terras (d) F.N.B.izudi & tenementa, &c. habend', &c. juxta form' ordinationis inde fall', scil't. de Mercatorib' 31 E. i. or 27 E. 3. quousq; sibi de debito pred' fuit satisfactum, that if the Conusee neglects to take the Profits, yet when the Conusee might have been satisfy'd. his Debt according to the Extent, the Conufor shall have his Land again: But it was faid that Words make a Plea, and therefore it was agreed, that upon the Statute of Merton, cap. 6 % 7. that the Profits of the Land which the Guardian takes for the (e) double Value shall be in Satisfaction of the double (e) Bridgm. 821 Value, but otherwise in Case of (f) single Value, for the 2 Inst. 91.
Words of the said Act (g) cap. 6. in Case of the double (c) Co. Linzolai Value are, Tunc teneat terram ejus ultra terminum atatis sua per tantum tempus quod inde possit percipere duplicem valorem maritagii: So that by express Words the Profits shall be accounted Parcel of the double Value; but the Words of the 7 Chapter concerning the fingle Value are, f. Si quis hares. Oc. pro domino suo noluit se maritare non compellatur hoc facere, sed cum ad atalem pervenerit det domino suo & satisfaciat ei, Oc. pro maritagio suo antequam terram suam recipiat, by which it appears, that the Guardian shall enjoy the Profits to his own (b) Use until the Heir satisfies him, vide for this Dif- (b) 2 Inft 930 terence, 27 H. 8. 5. b. 31 Aff. 26. 43 E. 3. 21. And further It was held, that in the faid Cafe of the double Value, it is in the Election of the Guardian, either to bring his Writ of Forfeiture of Marriage, for to hold the Land until he is fatis-17d, 18 E. 3. 18. acc. But if the Guardian chuses to have the Land, and enters into it, he shall not have the Land but only so long that he might levy the double Value, and his Negligence shall be his own Damage: Vide 15 H. 4. 5. b. 7 H. 6. 12. 15 H. 7. 14. 11 H. 6. 8. a. 2. It was re-folv'd, that when the Heir himself in the Case at Bar, of he in Reversion or Remainder in the Case of a 6) Care, 773 784 leafe, or Limitation of an Use enters upon him to whom the Land is devised, demised, or limited, as is aforesaid,

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SIT ANDREW CORBET'S Cafe. PART IV and pats him out, in that Cale it is in the (4) Election of such

Person to put out, either to bring his Action and recover the in Profits, which shall be accounted Parcel of the Sum. or he may re-enter and shall hold the Land over until he levies the whole Sum, and the Time in which he was fo put out, shall not be accounted Parcel; for when he who is to have the Land again doth the Wrong, against him and all others who claim under him, he who was put out, if he will, may reenter and hold the Land, and the other shall not take Ad. vantage of his own Wrong, nor compell him who was put out to bring an Action against him, against his Will, for the mean Profits: The same Law is in the other Cases, J. of Tenant by (b) Elegit, Statute Merchant, (c) Statute Staple, Guar-dian, who holds over for the double Value, if he in Reverflon who is to have the Land again ouffs him, they have such Election as is aforesaid, either to hold over or to bring their Action, vide 15 H. 7. 14. So if the Profits of the Land are wasted, by drowning of Water or (d) Wildsire, or any other Act of God, without Default or Negligence in the Party, (d) 3 Roll 478. there the Conufee shall hold the Land over, vide 11 H. 6.7. 7 H. 7. 12. b. 15 H. 7. 14. 33 H. 8. Statute Merchant Br. 41. But if he who has fuch Interest be ousted by a (e) Stranger, there the Time shall incur for the Mischief aforesaid, and there he is put to his Remedy against the Trespassor. If the Devisee in the Case at Bar, or Tenant by Statute Staple, &c. (f) furrenders to him in Reversion upon Condition, and afterwards enters for the Condition broken, he shall not hold

> over, for the Surrender is his own Act, and he can't enlarge his Interest, and therewith agrees 33 H. 8. Statute Merchant Br. 4. If Tenant by Elegit is interrupted in taking the Profits of the Land, by Reason of War, he shall not hold over, but it shall be in Disadvantage of the Tenant by Elegit, as it

(c) a Roll 478.

(f.) a Roll, 470, Roll. 412.

2 Co. 26 b Palm. 157. 2 Keb. 19 (i) 8 Co. 92. b. March Arb. 191. (k) 8 Co. 92. b.

(1) Lane, 35.

(1) 1 Vent. 202. is adjudg'd in 19 E. 1. Execution 246. 3. It was reloved, 1 Rol. Rep. 286. that altho' the Devisee had not (g) Notice of the Devise, yet 3 Rol. Rep. 152. that altho' the Devisee had occupy'd the Land, the Devisee ought to Winch 105, 117, if a Stranger had occupy'd the Land, the Devisee ought to take Notice at his Peril, for (h) vigilantib & non dormientibus jura subventiont; and none by the Law in such Case is bound to give him Notice, ideo he ought to take Notice at his Peril, as in Cafe of Arbitrement (i) 1 H. 7.5. 68 (k) E. 4 L. but the Cafe at Bar is stronger, because the Heir himself conceal'd the Will, and the Devifee had no Remedy for the mean Profits after the Death of the Heir, who oufled him; and Where it is held in ancient Books, f. 34 E. 1. Gard 129. 34 E. 1. Govenant 26. 33 H. 6. 42. 5 H. 7. 36. 7 H. 7. 12. 14 H. 7.27.

15 H. 7.8. F.N.B. 142. b. that the (1) Guardian shall ouff Te-

nant for Years, but not Tenant for Life, because Ten. for Life can't hold over as Leffee for Years (as it was held) may: It was resolv'd, that the Guardian shall oust neither, and therewith agres

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grees the Resolution of all the Justices in 36 H. 8. Leases from 18. It was likewise resolved, That if the Guardian may out the Lesse for Years, yet forasmuch as his Term is certain, s. certain in Beginning in Continuance, and in End, he can't by any Possibility hold over in such Case: But in the Case at Bar, and in the other Cases of Tenant by Elegit, Statute Merchant, Gr. there is no Term certain, but until such a Sum be by them levied, and therefore it stands with such interest, that in some Case he may hold over, and so a Jones and Dissernce. And it was said, That the Words of the Statute of Marlebridge; Salva sit nitilominus bujusmodi seoffatins also sua, quand terminum, seu ad seodum recuperandum, squam inde habuerins, that is to be intended of an Estate or Lease made by Collusion, for to that the Purview of the said Act extends, s. That the Guardian shall oust him, and in such Case without Question the Lessee shall not hold over.

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### Pascha 43 Regina ELIZABETHE, In the King's Bench.

### SOUTHCOTE'S Cafe.

Cro, Eli Brs.

Outbecte brought Detinue against Bennet for certain Goods and declared, that he delivered them to the Defendant to keep safe; the Defendant confessed the Delivery, and pleaded in Bar, that after the Delivery one J. S. stole them seloniously out of his Possession; The Plaintiff replied, that the said J. S. was the Desendant's Servant retained in his Service, and demanded Judgment, &c. And thereupon the Defendant demur'd in Law, and Judgment was given for the Plaintiff; And the Reason and Cause of their Judgment was, because the Plaintiff delivered the Goods to be fafe kept, and the Defendant had took it upon him by the Acceptance upon such Delivery, and therefore he ought to keep them at his Peril, altho' in such Case he shou'd have nothing for his fafe keeping. So if A, delivers Goods to B. generally to be (a) kept by him, and B. accepts them without having any thing for it, if the Goods are flole from him, yet he shall be charged in Detinue, for to be kept, and to be kept fafe is all one. But if A. accepts Goods of B. to keep them as he would keep (b) his own proper Goods, there if the Goods are stollen he shall not answer for them: Or if Goods are pawned or pledged to him for Mony, and the Goods are stollen, he shall not answer for them, for there he doth not undertake to keep them but as he keeps his own; for he has a Property in them and not a Custody only, and therefore he shall not be charged as it is adjudged in 29 Aff. 28. But if (d) before the stealing he who pawned them tendred the Mony, and the other refused, then is there Fault in him, and then the stealing after such Tender, as it is there held, shall not discharge him: So if A, delivers to B. a (e) Chest lockt to keep, and he himself carries away the Key, in that Case if the Goods are stollen, B. shall not not be charged,

(a) 1 Leon. 224. Owen 141.1 Rol. 318. Cro. El. 219. 10 H. 6. 21. a. Co. Lit. 39. a. Dr. &c Stud. 129. a. b. Moor 543. Palm. 549. 550. (b) Co. Lit. 89.a. (c) 1 Roll. 338. Co. Lit. 89. a. Palm. 550.

(d) 1 Roll 338. Co. Lit. 89. 24

(e) Co. Lit.

charged, for A. did not trust B. with them, nor did B. undertake to keep them, as it is adjudged in 8 E. 2. Detinue (a) 59. So the Doubt which was conceived upon fundry differing Opinions in our Books, in 29 Aff. 28. 3 H. 7. 4. 6 H. 7. 12. 10 H. 7. 26. of Keble and Fineux are well reconciled, vide Bract. lib. 2. fol. 62.. b. But in Accompt it is a good Plea before Auditors for the (b) Factor, that he was (b) Co. Lie 894. robbed as appears by the Books in 12 E. 3. Accompt 111. Moor 462. Doc. 41 E. 3. 3. 6 9 E. 4. 40. For if a Factor (altho' he has 1 Brownl. 25. Wages and Salary) does all that which he by his Industry can do, he shall be discharged, and he takes nothing upon him, but his Duty is as a Servant to merchandize the best that he can, and a Servant is bound to perform the Command of his Master: But a Ferryman, (c) common Inn-(c) 1 Sid. 26.
keeper, or Carrier, who takes Hire ought to keep the 523.2 Sand. 38.
Goods in their Custody safely, and shall not be discharged 1 Roll. 38.
if they are stollen by Thieves, vide 22 Ass. 41. Br. Action 1 Roll. 567. fur le Case 78. And the Court held the (d) Replication 2 Bulftr. 280. idle and vain, for non refert by whom the Def. was rob-330, 331. Hobbed, vide 33 H. 6. 31. a. b. If (e) Traitors break a Prison it 37, 18. Co. It. shall not discharge the Gaoler, otherwise of the King's E-1 Vent. 190, nemies of another Kingdom, for in the one Care ne may 3 Keb. 72, 73, have his Remedy and Recompence and in the other not. 74, 112, 113, 113, Note Reader, it is good Policy for him who takes any Rep. 85, 2 Mod. Goods to keep, to take them in special Manner, scil. to keep Rep. 270. them as he keeps his own Goods, or to keep rhem the best (e) 1 Roll. 808. he can at the Peril of the Party; or if they happen to be Dyer 66, pl. 15-follen or pursoined, that he shall not answer for them, El. 815, Palm. Some he who acceptes them, ought to take them in such or 550. Jenk. Cent. nemies of another Kingdom, for in the one Cafe he may 191, 238, 239 for he who accepteth them, ought to take them in fuch or 550. Je the like Manner, or otherwise he may be charged by his Firz Barn 57 general Acceptance. So if Goods are delivered to one to be deliver'd over, it is good Policy to provide for himself in fuch special Manner for Doubt of being chaged by his general Acceptance, which implies that he takes upon him to do it.

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### Termino Paschæ, Anno Regni Domina Elizabethæ nuper Regina Anglia 43. Rot. 569.

### LUTTRELL's Cafe.

Somert it.

Emorandum quod al's scilicet Termino sancti Michaelis ultimo praterito, coram domina Regina apud West. ven' Edw. Cottell gener' per J. Nightingale attorn' suum, & protulit hic in cur' dieta dom' Reg. tunc ibidem quandam billam suam vers. Geo. Luttrell armig. R. Norcome, & J. Quick in custod' Mar' &c. de pl'ito Transgr' super casum, Et sunt pleg. de prosequend', scz. Joh. Doo, & Ric. Roo; Quæ quidem billa sequitur in hæc verba, st. Somers. st. Ed. Cottell gener', queritur de G. Lutterell armig', Ro. Norcome, & J. Quick in custod' Marr' Marelc. dom' Reg. coram ipla Reg. existen', pro eo viz, qd cum idem Ed. 4 die Maii an. regni dominæ Eliz. nunc Reg. Angliz 41. ac antea seisitus fuisset, de & in duob' antiquis & ruinofis molendinis fullonicis cum pertin'in Dunster in com' præd' in dominico suo ut de feodo, ad quæ quid' molendina fullonica magna pars aq; cujusdam rivoli in D. præd' a quodam loco voc' the heat meare ejusd' ri-voli in D. præd', dicto 4 die Maii ann' 41. suprad' currebat, necnon præantea a tempore cujus contrarii memoria hominum tunc non extitit continue currere consuevit & solebat; cumque etiam præd' 4 die Maii anno 41. suprad', ac antea a toto præd' tempore cujus contrarii memoria hominum tunc non existebat pro preservat', directione, & continuatione recti curs. dict' magnæ partis aquæ rivoli præd' ad molend' fullonica præd', quæd' densa ripa Angl' a thick banke de meremio & terra construct' scit' suisset prope & supra molend' præd' ad occident' part' curs. præd' magnæ partis præd' aq; rivoli præd', & contigue adjac' fuisset cuidam

Crci Car. Soo.

na communiter voc' Mest street in Dunster pred': Ac o octavo die Octobr', anno regni dicte dom' reg' nunc dragelimo primo suprad', præd' duo molendina fullode ut prafertur rumofa existen' totalit' devullisset, ac postnodum fcz. vicelimo die Junii, anno regni tiche dom' nunc 42. apud Dunster prædiet, in com. præd' in locie orundem, ac ubi præd' duo mollendina fullonica antea alia aqua rivoli prad duo molendina granatica pro monione granorum de novo ædificasset, erexistet, & perfefifit existit de eisd' 2 molendinis granaticis per ipsom sie prefert' de novo adificat', erect', & perfect. in d'nico fuo n de feodo, ac præd' magna pare aque rivoli prædiet in Donter præd' a præd' loco voc' the head meage ejuid. riin Dunster prad', a tempore nova adificationis, erectionis, & perfection' præd' duorum molendin' gramticonm, usque decimum diem Sept. tunc proxim. lequen' currindem duor molendinorum gramaticorum ulque eundem minum diem Septem. diversa lucra & proficua de diversis igen diet. domina reg. nunc pro molatione granorum fuoun apud ead. molendina granatica molitorum acquifivillet miciose machinant' & intendent' ipsum Ed. minus juste rigravare, ac ipsum de proficuis præd' molendinorum form granaticorum totaliter impedire & deprivare, apud miler prad', prad' decimo die Sept' anno quadragelimo Palm. 504undo sapradicto, prædictam densam ripam soderunt & merunt, & totam prædietam magnam partem præd ag' in a predicto loco voc' the head weare currebat & curne debuit & folebet, ab antiquo & folito curla fuo, viz. pad Bratam commun' voe the Whelt Itz set in Duncher Palm 504diverter' & substraxerunt, per quod idem Ed tota ncua molendinorum granaticorum fuorum præd' per magm tempus, viz. a præd' decimo die Sept', anno quadratimo secundo supradicto, usque diem impetrationis hujus llz, scz. vicesimum diem Novembris, anno regni diet' n. reg. nunc quadragesimo tertio totaliter amisit & erdidit ad dampnum ipsius Ed. ducentarum librarum; inde produc' fectam &cc. Et modo ad hunc diem, feil. men Mercur' prox. post quinden' Paschæ isto eodem term', ue quem diem prædicti Georgii Roberti & Johanni with habuerunt licentiam ad billam prædict' interloquend', tune ad respondendum, &c. coram Domina Regina Westmonasterium ven'tam prædict. Edw. per attorn'

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fuum præd', quam præd' Geor. Ro. & Jo. Quick per Step Brodrippe attorn' fnum, & idem G. R. & Jo. defend' vim injur quando &c. Et dicunt quod ipfi non funt inde cu pabil', & de hoc pon' le super pr'iam : Et præd' Edward fil'iter &c. Ideo ven' inde Jur' coram d'na reg. apud We die Jovis prox. post quinden' fanct' Trin', Et qui nec & ad recogn' &c. Quia tam &c. Idem dies dat' est part' prat ibm' &c. Postea continuat' inde processu inter partes pra de pl'ito præd' per Jur' posit' inde inter eas in respect of ram domina reg. apud West, usque diem Veneris prox po Octab. sancti Mich. extunc prox. sequen', Nisi Justic' d'a reg. ad affisas in com' præd' capiend' affign', prius die Jon 6 die Aug. apud Castr' Taunton' in Com' præd' per som flatuti &c. ven' pro defectu Jur' &c. Ad quem diem com d'na reg. apud West. ven' partes prædict' per attorn' so præd', Et præf. Just, ad affic cor' quibus &c. miser' hien cord' fuum coram eis habitum in hæc verba. ss. Postea d & loco infracontent', coram W. Periam Milite capitali & ron' Scaccar' d'næ reg. & Ed. Fenner uno Justic', diet. d'a reg. ad pl'ita cor' ipsa reg. tenend' affign', Justic' ejuste d'næ reg. ad affis. in com. Somers. capiend' affign' per som flatuti &c. ven' tam infranominat' Ed. Cottel gen' per A drian Street attorn' suum, quam infrascr' Geor. Lutte arm', Ro. Norcome, & Jo. Quick. per Hen. Collier attor suum, Et Jur' jurat' unde infra fit mentio exact sil'iter ver qui ad veritatem de infracont' dicend', electi, triati, & rati, dicunt super sacr'm suum quod præd' G. Ro, & funt culpabiles de præmissis eis interius imposit, pro præd' Ed. Cottell interius versus eos queritur, & assida dampna ipsius Ed. occasione infrascr', ultra mis. & cult sua per ipsum circa seel suam in hac parte apposit, ad so & pro mif. & custag. illis ad 5 s. Ideo concess. est qd'pre Edw. recuperet versus præf. G. R. & Jo. dampna sua pr per Jur. præd' in forma præd' affest. necnon sex libras mif. & custag. suis eidem Edw. per cur' d'næ reg. hic affensu suo de incro adjudicat: Que quidem dampni toto se attingunt ad octo libras & quinque folid. Et pr Geo. Ro. & Joh. in m'ia &c.

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opna. St pro aschæ 43 ELIZABETHE Rot. 596, between Cottell Plaintiff and Luttrell Defendant, in an Action on the Case in B.R.

### LUTTRELL's Cafe.

Ottell brought an Action on the Cafe against Luttrell, Hutton 12 and declared that 4 Martin anno 40 Eliz. he was feifed in Fee of two old and ruinous Fulling Mills, nd that from Time whereof Memory, &c. magna pars ane cujusdam rivoli ran from a Place called Hodwear to he said Mills, and that for all the said Time there had een a Bank to keep the Water within the Current, and hat afterwarwards the Plaintiff 8 Octob. 41 Eliz. pull'd lown the faid Fulling Mills, and in June 42 in Place of the aid Fulling Mills, erected two Mills to grind Corn; and hat the faid Water ran to the faid Mills 'till the 10 Sept. ext following, and that the same Day the Defendants fomunt O' fregerunt the Bank, and diverted the Water from is Mills, &c. The Defendants pleaded Not guilty, and 1 Roll. 104. 1 twas found against them, upon which the Pl. had Judg-12 H. 6. 14 ment. Upon which Luttrell the Def. brought a Writ of error upon the new Statute in the Exchequer Chamber, and here two Errors were affigued. I. That by the breaking 27 El, cap. L' nd abating of the old Fulling Mills, and by the building of new Mills of another Nature, the Pl. had destroyed the rescription, and could not prescribe to have any Water-Course to Grift Mills: As if a Man grants me a Water-Course to my Fulling Mills, I can't (as it was said) conert them to Corn Mills, nec e contra. So if I grant to one Estovers to burn in his Hall, he can't convert his Hall into a Kitchen, or Malt-house: The same Law of a Pre-cription; for Prescription in such Case shall be intended commence by Grant, and in Proof thereof they cited F.N. B. 180. H. And 7 E. 4. 27. a. if a Man has Estovers , E. 4. 11. 2. Co. Grant, or appendant to an antient House, he shall Lit. 41. b.

not have them to an House which he new builds: And 3 Rulstr. 334.

Cro. 25. Hob. 10 H. 7. 13. a. b. & 16 H. 7. 9. a. b. where the Ab-39.

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WINOT 127.

bot of Nemerk granted by Fine to find three Chaplains in such & Chappel of the Conufee, and afterwards the fair Chappel fell, and there tenetur (during the Time that then is no Chappel) the Divine Service shall cease, for it ough to be done in a decent and reverend Manner, and not a large fub die; But there tenetur if the Chappel is rebuil in the same Place where the old stood, then he ought to built in another Place, there the Grantee is not bound to de Divine Service there: If there he Lord and Tenant, and the Tenant holds to cover and repair the (a) Lord's Hall s in to E. 3. 23. in this Case if the Hall falls, yet if the Lord builds the Hall in the same Place where it was be fore, and of such Bigness as it was before, the Tenant is bound to cover it; But if it is of greater Length (b) or Breadth, fo as Prejudice may come to the Tenant, or il it is built in another Place, or if that which was the Hall is converted to a Cowhouse, Stable, Kitchin, or the like, he is not bound to cover it, for the Lord by his Act can't alter the Nature of the Tenure, nor of the Service which the Tenant ought to do: And in this Case here, it might be more beneficial to him who made the original Grant, and o others who had his Estate to have them Fulling Milk than Com Mills: For perhaps they have Corn Mills for mear, that the building of Corn Mills would be prejudicia to them, and it wou'd be against Reason to extend a Gran or Prescription to have a Water-Course to Fulling Milk co Corn Mills, which is not within the Purport or Intension of the Grant or Prescription, and the Grant or Prefeription ought to be purfued: If a Man holds of another of his Manor by Homage, Fealty and Castle-guard the Lord aliens the Manor except the Castle, there the Aliene thall not have (c) Castle-guard, as appears by 31 E. 3. All war. And it was faid, that there the Alienee can't build Another Objection was made, for a much as the Pl. himself be broke and abared the Fulling Mills, altho he build new Mills in the same Place, and of the same Nature the old were, yet he has destroyed his Prescription; for a tho' in Casewhen Mills or Houses which have Water-Count or Estovers, or other Things appendant or appurtenant to them be overthrown by the Wind, or burned by Wildfire, or fall by any other Act of God, that if the Owner rebuilds them in the same Place, and in the same Manne as they flood before, that they shall have the same ancies Things Appendants and Appurtenants to this new Mill of House, because the Act of God shall not prejudice any yet if they be erased by the Party himself, or fall this his Default, the ancient Appendants thereby are loll for by his own Act he cannot extend the Prescription or Grant which was in a Manner appropriated to the

(c) Co.Lit. 83. & 3 Roll 523.

2 Cro. 182. Moor 877. ns in

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old House, to a new House: So it was objected, That one of his own wrong, burns, or pulls down the House Mill which has such Appurtenances, he shall recover in Damages; and altho' in such Case he rebuilds the louse or Mill, yet he shall not have the Appendances, the Perkins (4) 128. b. But it was resolved, That the (b) rescription did extend to these new Grist Mills, for it ap-(6) Hutt. 58. ters by the Register, and also by (c) F. N. B. that if a Man Worth 45, to demand a Grist Mill, Fulling Mill, or any other Mill, Poplary to demand a Grist Mill, Fulling Mill, or any other Mill, Poplary to demand a Grist Mill, Pulling Mill, or any other Mill, Poplary to demand a Grist Mill, Pulling Mill, or any other Mill, Poplary to demand a Grist M Writ shall be general, de uno molendino, without any 182, M addition of Grist or Fulling, 21 Ass. 23. agrees of a Plaint (c) F.1 Affile. So that the Mill is the Substance, and Thing to orig 2.2 ademanded, and the Addition of Grift, or Fulling, are lac 557at if the Pl. had prescribed to have the said Water-course n his Mill generally (as he well might) then the Cafe wou'd without Question, that he might alter the Mill into hat Nature of a Mill he pleased, provided always that no hejudice shou'd thereby arise, either by diverting or stopping of the Water, as it was before, and it should be inended that the Grant to have the Water-course was before the building of the Mills, for no Body will build a Mill he-for he is fure to have Water, and then the Grant of a Water-course being generally to his Mill, he may alter the Quality of the Mill at his Pleasure, as is aforesaid: So if Man has (d) Estovers either by Grant or Prescription to (d) Co. Lit. 41.6 is House, altho' he alters the Rooms and Chambers of this 4 Leon. 241. house, as to make a Parlour where it was the Hall, or the hil where the Parlour was, and the like Alteration of the Qualities, and not of the House it self, and without making new Chimneys by which no Prejudice accrues to the Owner of the Wood, it is not any Destruction of the Prescription, then many Prescriptions will be destroyed, and altho builds new (c) Chimneys, or makes a new Addition to (c) Hob. 30. his old House, by that he shall not lose his Prescription, Leon 45 the can't imploy or spend any of his Estovers in the new 4 Leon. 2 himneys, or in the Part newly added; The same Law of Bo Conduits and (f) Water-pipes and the like: So if a Man (f) 1 Side has an old Window to his Hall, and afterwards he converts 291. 1 Ve he Hall to a Parlour or any other Use, yet it is not lawfal for his Neighbour to stop it, for he shall prescribe to me the Light in fuch Part of his House: And altho' in his Case the Pl, has made a Question, for as much as he nor prescribed generally to have the said Watercourse his Mills generally, but particularly to his fulling Mills. let for as much as in general the Mill was the Substance ind the Addition demonstrates only the Quality, and the (g) (c) Crowles Alteration was not of the Substance, but only of the Quality, or

he Name of the Mill, and that without any Prejudice in the

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(c) Co. Lit. 4. 2. 2 Rol. Rep. 265.

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Watercourse to the Owner thereof; for these Reasons ; was refolved, that the (e) Prescription remain'd. If a Corporation have Franchifes or Privileges by Grant or Precription, and afterwards they are incorporated by another Name, as where they were Bailiffs and Burgeffes before now they are Mayor and Comminalty; or Prior and Convent before, and afrerwards they are translated into a Dean and Chapter, altho' in thefe Cases the Quality and Name of their Corporation are (b) altered and changed, and chiefly in the Case of Prior and Convent, for from regular who are dead Persons in Law they are made secular, yet the new Body shall enjoy all the Franchises, Privileges and Hereditaments which the old Corporation or Body Politick had either by Grant or by Prescription, for no Person will be prejudiced thereby; vide 14 H. 6. 12. 37 Aff. 6. 38 Aff. 22. 39 H. 6. 15. Another Reason was added that when a Man has any Thing appendant or appurtenant to an House or Mill, the most perdurable Part of it is the Land in which the Foundation is, and upon which the whole Fabrick of it consists, and in Respect thereof, by Grant of all his (c) Lands, all his Houses, Mills and Woods will pass. And so it was resolved, as Popham C. J. said, by Wray and Dur 2 And. 123, 124. Chief Justices, upon Conference had with divers other Justices. 476, 477. Godb. stices upon a Case referred to the said Chief Justices: For 352. in Pracipe, where an House, Mill or Wood is demanded, the Warrant of Attorney is in placito terra: And in Cafe of Voucher, when Judgment is given for the Tenant to have in Value against the Vouchee, the Judgment is Quod habeat de terris of the Vouchee ad valentiam, yet thereby he shall have Houses, Mills, Woods, &c. and in special Cases by Recovery of Lands, a Man shall recover Houses, as it is held by some 4 E. 3. 161. 6 E. 3. 283. 2 E. 3. 37. Plow. Com. 168. 8 E. 3. 377. Dyer 28 H. 8. 47. and therewith agrees the Civil Law; for (d) appellatione fundi, omne adificium & omnis ager continetur. Then the Prescription or Grant shall respect the most perdurable Part, and which in Judgment of Law includes the whole. And therefore it was refolved that altho' the House or Mill falls by the Act or Default of the Owner, or by the Wrong of another, yet forasmuch as the perdurable Part, and which includes the whole, remains, he may rebuild it without any Loss of any Appendant or Appurtenant to it, but it ought to be upon the same Place which was the old Foundation of the old House: For as that supported and in Judgment of Law included the old House when it stood, so it shall support and include the new House, and so in a Manner a Continuance of the old House, and so the Quere which Perkins makes fold 128. (e) well resol. And so it was said in all the Cases of Estovers and Tenures aforesaid, when the Alteration of the Quality

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Name of Part of the House doth not cause any Prejudice the Terre-tenant, the Effovers and Services remain: Et Reader, a Cale reported by Serjeant Bendloes Mich. 3: 18 Rot. 649. in Communi Banco, in Repl' brought by Sir William Capel (a) against Robert Apprice and others, of four (a) Moor 1, 2.
Hories taken in a Place called old Haddam Park, in little Day. 3. 2. b. N. leben in the County of Hertford; The Defendants made Benl. 9, 10. Lin Conusans as Bailiffs to Rich. Bithop of Lond. because Sir Th. und Knight was feifed of the Manor of little Hadham in whereof the Place where, Gr. was Parcel, and held it the Bishop of London, ut de Castro suo de Stortford in m' pred', per homagium, fidelitatem, & ad (b) scutagium do-(b) Co. Lit. in Regis xl. s. cum acciderit, & ad plus plus, & ad minus inus, O per redditum v. s. pro Ward' Caffri prad' ad feffum Michaelis Archangeli annuatim solvend', ac per reddim xiii s. iv d. pro auxilio vicecom' at four Feasts of the Tur, Oc. And for 15 s. for Castle guard behind for three Years, Oc. they avowed the taking of one of the faid four Horses, and for 40 s. for Aid of the Sheriff behind al-Horses. The Pl. in Bar of the Avowry as to the taking of one Horse for Castle guard said, that before the Beginung of the said three Years, Costrum prad' funditus corruit fenitus in decasum extitit, & adhuc existit, & hoc paratus verificare, unde petit judicium fi præd' Rich. Apprice, &c. n sliquo redditu pro Wardo Castri prad' sic obruti & penitus a decasum existen', capt' prad' unius equi justam cognoscere. left, crc. Upon which it was demurred in Law, and as the Aid of the Sheriff it was also demurred in Law: And in that Case it was resolved, that altho' the Castle is \* ru- 1 Mod Rep. 200. ad and decayed, (c) yet the Rent remain'd; For when the (c) Dav. 3. 2. 1 Terant holds of the Lord to ward or repair the Lord's \$3.2. N. Benl. Caffle, and afterwards fuch Service (as Lit. fays in the Cafe 10. & Soccage) was in ancient Time changed by mutual Conent of, the Lord and Tenant into an annual Rent, yet it. laid, That such Rent is paid pro Wardo Caftri, id eff. in tusaction Wardi Castri; for in this Case, and such like, fro) fignifies full and perpetual Recompence and Satisfa-Time, so that the Lord may have the Castle ward when will, for the Seisin of the Rent is not Seisin of the Castleand in such Case: But if the Tenant holds to guard the ord's Caftle, if the Caftle falls, the Service (1) is suspen- (d) Co. Lit. 83.2. until it is rebuilt, but then the Tenure shall not be in Case alledged to be by the Rent, but by the Castle. hard, neither shall the Avowry be made as in the Case Bar it is for the Rent, but for the Castle-guard: vide in 26. b. that if a Man holds his Land by certain Rent (e) Co. Lit. Caftle-guard, Lit. says, that such Tenure is Tenure in 87. 2. b. 6 Co. Socrage, which can't be if the Castle-guard remains, for then \$3, 356.

the Tenure shall be by Knight's Service, for Linkson that where the Tenant ought by himself or by another to Linds do Castle-guard, that such Tenure is Tenure by (a) Knie Service fo the Difference between Rent for Caftleand Service to guard the Castle. The fame Law if Tenant holds of his Lord by certain Rent for Wor days, or any other Service. And Sir William Copel Plaintiff perceiving the Opinion of the Court again him for both Points, was nonfuited, and both the Rents a

(d) Plowd. 168. b. 169. b. Br. Comprise 18. Fitz. Bar. 143. przcipe pod reddat 23.

(e) Co. Lit.

Mts. 119.

(b) N. Benl. 10 the faid Strjeant reports are paid (b) to this Day: An when a Man holds of another in Soccage, or otherwife of his Caftle, and afterwards the Caftle falls, and is utter ruinated, yet the Tenure remains; For it must be know That when any Tenure is of any Person as of a Cafile, i (c) Co. Lit. 5.2 fuch Cafe the Caftle includes in itself a Manor, for (c) Cafe as a Manor off namen generale & collectivum, and may include in itself divers Things, f. Demeans and Services, Oc. 5 H.7. 9. a. Land may be Parcel of a (4) Caftle, vide 20 H.6 Travers 4. That an Hundred may be as well Parcel of Castle as it may be of a Manor, as it is held in 8 H. 7. 1. And therefore when a Tenure is of any as of his Castle (which always in fuch Case includes in itself a Manon altho' the Castle is ruinated, yet the Tenure remains with out Question : Vide 19 E. 2 Aff. 399. Divers Tenants held of another as of his Manor by Fealty and Suit to the Lord Mill, the Lord alien'd the Mill, with the Suit of the Te nants, and afterwards the Vendor died, and his Son en tred, and conceiving that the Tenants who held of his Ma nor could not do Suit to him who had not the Manor, himself made a new Mill elsewhere upon other Parcel of hi meins, and had the Suit to his own Mill which the Ven dee ought to have had; for no Man can have Suit to h Mill by Reason of Tenure if it were not of Corn growing in certain Land, and that within his Seigniory : Vide 17 B. 97. 29 E. 3. 12. 16 E. 3. Avowry 92. And by the fi Case it appears, that altho' the antient Mill is aliened, if it falls, the Lord may erect a new Mill in an other Place within his Manor, for the Tenure in such Case is to Suit to the Lord's Mill generally, and not to any pu cular Mill; Nota bene all these Differences. Another lie was affigned because the Prescription was that magne (f) aqua cujusdam rivuli, Oc. that it was incertain much Water shou'd be comprehended within these Wormagna pars aque; and Declarations, and especially Actions on the Case, ought to be certain, and the Case ought to be shewed in certain, and if the In is that one and the same River before it comes to Mills divides it felf into two Branches, whereof

LUTTREL's Call. to the Mills, the better Form was to prefcribe but it was resolved, that altho' the Declaration have had a better Form, yet in Substance it was for it was not possible to shew how much Water runs and the Quantity (a) of the Water is not mate- (a) Dock Man as much as the Defendant by the breaking of the diverted the Water which ran to the faid Mills; El. Dyer 248. b. (b) where in an Action on the Gafe (1) Cr. Jec. aque; and another President is there cited between pl. 80. 1 Lon. Searle, that an Affife of Nusans was brought pro 273. 2 Roll. ne majoris partis cursus aque, by which the Judg- 47juen by Sir John Popham Chief Justice and his Com-Justices of the King's Bench was affirmed. Note is Case which was adjudged by both the Courts. 

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### DRURY's Cafe.

Mo. 561, 562. I And. 201. Cr. El. 723, 724, 839. Jenk, Cent. 272, 273.

Rury brought a Writ of Error on a Judgment given in the Common Pleas in a Quare impedit brought by the Cent. Queen, where the Case was; A Countess being a Widow, retain'd 2 Chaplains, and afterwards retain'd a third, which third first purchas'd Dispensation to have two Benefices with Cure, and accordingly was advanced to two with Cure, whereof the first was above the yearly Value of 81. And if he was lawfully qualify'd within the Stat. of 21 H. 8. cap. 13. was the Question in the Common Pleas: For if he was lawfully qualified, then the first Benefice by the Acceptance of the second was not void, O. per consequens no Title to present by Laps devolv'd to the Q. and by the pleading it doth not appear that the two first Chaplains were living at the Time when the third was advanced, for it was averr'd only that the two were alive at the Time when the third was retain'd, upon which, great Question arose in the King's Bench: And it was adjudg'd in the Common Pleas, That Title to prefent by Lapfe was devolv'd to the Queen, and therefore Judgment was given there accordingly. And after many Arguments at Bar and Bench upon the Writ of Error in the King's Bench, the Judgment given in C. B. for the Queen was affirm'd. And in this Case 2 Points were resolv'd. 1. When the Countess retain'd two Chaplains, these two are capable of a Dispensation according to the said Act of (a) 21 H. & by which it is provided, That every Counte so being a Widow, may have two Chaplains, whereof every one may purchase Licence of Dispensation. Then when she retains two, the Statute is executed, for she can't have more than two capable to have Dispensation, and the Retainer of the third

(a) Moor 561. Antes 78. b.

can't divest the Capacity of Dispensation which was vested by their Retainer in the first two; for altho' the Countel's might have as many Chaplains as the would at the Common Law, yet the can't have more than two capable of a Dispenfation by Force of the Statute; and Reason equires that he who has serv'd longest should be first preferr'd, & (a) qui prior (a) Co. Lit. 14a.

est tempore, potior est jure. And so now this Point has been 347. b.

four Times adjudg'd: 1 in the Common Pleas, Pusche 31. Eliz. Rot. 728. in a Quare impedir between the Queen and the Bishop of Lincoln, the President of Maudin College, and John Skuffling (b) Glark. 2 in the Lady St. John's Cafe. 3 in (b) Pofter 118.2 this very Case in the Common Pleas; and 4 now in the K's Moor 277.
Bench; vide Dyer 312. (c) by the Opinion of Catlyn, Saunders Cr. El. 724 and Dyer, if a Lord who is allow'd but three Chaplains, re- (c) Cr. El. tains fix by his Letters Testimonial, at one and the same Dy. 312. p Time, and all fix are prefer'd to fix several Pluralities, the Moor 440. three who are first promoted, are warranted by the Statute, and yet the Retainer was not according to the Statute, but in equali jure (d) melior est conditio possidentis. 2. It was re-(a) Vaugh. 60 folv'd, that when the 2 first were retain'd according to the Statute, and thereby the Statute executed as aforefaid, the Retainer of the third, altho' it was good at the Common Law, yet it was void to give him Capacity to purchase Dispensation within the Statute, and therefore altho' the other two were dead before the Advancement of the third, yet forafmuch as they were alive at the Time of his Retainer, which Retainer was at the Common Law, and not according to the Statute, therefore he ought to have had a new Retainer after their Death and before his Advancement, for quod (e) ab (e) 4 Co. 2. b. initio non valet, in tractu temporis non convalescet; As if the Hutt. 51.

Son and Heir apparent of a Baron retains a Chaplain, and 2 Co. 55. b.

gives him his Letters under his Hand and Seal, and after-Cr. El. 585.

wards his Father dies, and this Chaplain purchases Dispense Co. Lit. 35. 2. initio non valet, in tractu temporis non convalescet; As if the wards his Father dies, and this Chaplain purchases Dispen- 10 Co. 6 fation, this Retainer and these Letters will not serve 8 Co. 135. b., him, because they were not available at the Beginning: 2 Built. 304.305. And if a Baron retains three Chaplains according to the 3 Built. 193. And if a Baron retains three Chaplains according to the 3 Bull. 192. Statute, and they purchase Dispensation, and are advanced according to the Statute, now if the Lord discharges one of them from his Service, he can't retain another during his Life, for then by fuch Means he might advance infinite Chaplains without Numb. by which the Stat. would be defrauded, for the Stat.

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RUDLY SEGRE three only to have Benefit of the Act: And g'd in the Common Pleas, Pajcha 28 Eliz. Rot. to was it adjudged in the Common I lough and the Bishop of 2130. in a Quare impedit between the Queen and the Bishop of Glourester and Edward (a) Savacre, and affirm'd by a Writ of Glourester and Edward (a) Savacre, and it was said, that the said Error in the King's Bench; and it was faid, that the faid Act of 21 H. d. shall be taken strictly against Pluralities, and therefore it has been held, that if a Baron, who by the Statute may retain three Chaplains, is made Warden of the Cinque Ports, who may have a Chaplain in Respect of his Office, yet he shall have but three. And so if a Baron has three, and is made an Earl, yet he shall have but five in all, of fic de cateris. Tanfield and others were of Counsel with the Plaintiff in the Writ of Error, and the Attorney and others with the Defendant. Labora Markey Printer the second second second second second particular and many and a region of to the contraction in the constitution with -665 ST company of your tenth. Reprinting a print of a contest of the small The property of the first of the property of the first of the party of the first of much as apprehended a list, equality of the court with the And policial durable of another objects out it was to el manica partido, que com quel montante la mente To the desired much and be really to a tre in the latter, we retired to produce the product of the De ab transa of the A specific material invited the constitution of t B appropriately by the property of the particular the and a think which was a state of the state of the 在11年2月1日,200年日中,10月2日中国中国中国中国中国中国中国中国 forther a state of the settle of the state o being as to high the first the part of the reality as the number of the process and was a substantial and a substantial and and the medical control of the state of the The state of the continue they anything the another to the another the Participal Associated by the second desired and a second desired and the second desired and the second desired and the second desired and the second desired and the second desired and the second desired and the second desired and the second desired and the second desired desired and the second desired desired and the second desired the stripters of the analysis of a self-tened about 100 at 100 flat Antick medical consideration of the second of the Manual of the Manual Constitution of the Const

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## De Termino S. Hill. anno Regni Domina Eliz. Regina Anglia 38. Rot. 305.

### SLADE's Cafe.

Emorandum qd' al's scilicet Termino Sancti Michael' Devon ff. ultimo præterito, coram domina Regina apud West. ven' Jo. Slade per Nich. Weare attorn' fuum, & protulit hic in cur' diet' dom' Reginæ tunc ibid' quandam billam fuam vers. Humf. Morley in custod' Marr' &c. de placito Transgression' super casum, & sunt pleg, de prosequend', scil' Joh. Doo, & Ric. Roo; quæ quidem billa sequitur in hæc verba, sf. Devon' sf. Joh. Slade queritur de Humf. Morley in custod' Marr' Maresc' dom' Reginæ coram ipsa Reg' existen, pro eo viz. quod cum præd' Joh. 10 die Novemb' anno regni dom' Elizabethæ nunc Reg' Angliæ 36. possession' fuisset protermino diversor' annorum adtunc & adhuc ventur', de & in uno clauso terr' cum pertin' in Halberton in comitatu pred' vocat' Mack Barke, continen' per estimationem 8 scras, & sic inde possession' existen', idem Johannes postea scilicet eodem 10 die Novemb' anno 36 supradicto, præd' c'm cum tritico & filigine seminasset, que quidem triticum & filigo in clauso præd' per ipsum Joh. sic ut præf. seminat. Poltea scilicet 8 die Maii anno regni dicta dom' Regina nunc super præd' clausum in bladis crescen' fuerunt, prædict' dumf. præd' 8 die Maii anno 37 suprad' præd' tritico & siligine in bladis super clauso præd' sic ut præf. tunc crescen. existen', apud Halberton præd' in consideratione quod idem. Joh. adtunc & ibidem ad specialem instantiam & requisitionem ipsius Humf. barganizasset & vendidisset przf. Humf. ad opus & usum ipsius Hums. propr', omnia blada tritici & siliginis que tune crescebant super prædicto clauso vocat the Math Barke, (decimis inde Rector' Ecclefiz de Halberton prædict' debit' tantummodo except':) Super se assumpsit

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PART IV.

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& eidem Joh' adtunc & ibid' fidelit' promisit, qd' ipse idem Humf. 16 l. legalis Monetz Angliz przf. Johanni in festo S. Joh' Baptist runc proxim' sequent' bene & sidelit' solvere & contentare vellet : Prædictus tamen Humfrid' promission' & assumption' suas præd' minime curans, sed machin' & intendens ipsum Johann' de præd' 161. in hac parte callide & fubdole decipere & defraudare prædict 16 l. præf. Johanni juxta promissionem & assumptionem suas præd' nondum folvit, nec aliqualiter pro eisdem contentavit, licet idem Humf. ad hoc postea, scilicet ultim' die Sept. anno regni dicta domina Reginz nunc 37 fuprad', apud Halberton præd' per ipfum Joh' sæpius requisit' suisset, sed ill' ei solvere seu contentare omnino recufavit & adhuc recufat, unde idem Johannes dic' qd' deterioratus est & dampnum habet ad valenc' 40 Marcarum, Et inde produc' sectam, &c. Et modo ad hunc diem, scil. ad diem Veneris prox. post Octab' S. Hill. isto eodem Termino, usque quem diem præd' Humf. habuit licenc' ad billam præd' interloquendi & tunc ad respondend', &c. coram dom' Regina apud Westm. ven' tam præd' Joh' per attorn' suum præd', quam præd' Humf. per Joh' Halstaff attorn' suum, & idem Humf. defendit vim & injuriam quando, &c. Er dic' qd' ipse non assumpsie superse mod' & forma prout præd' J. Slade superius vers. eum queritur, & de hoc pon'se super patriam; & præd' J. Slade similit' &c. ideo ven' inde Jur' coram dom' Regina apud West. die Jovis proxim' post Octab' Purificat' beatæ Mariæ, & qui nec &c. ad recogn' &c. Quia tam &c. Idem dies dar' est partib' præd' ibidem &c. Postea continuat' inde processu int' Partes præd' de placito præd' per jur' posit' inde inter eas in respect' coram dom' Reg' apud West. usque diem Mercurii proxim' post quinden' Pasch' extunc proxim' sequen', nisi Justic' dom' Reg' ad assisas in com' præd' capiend' affign' pri' die Lunæ in secunda septiman' quadragesim' apud Castrum Exon' in com' præd' per form' statut' &c, ven' pro defectu jur' &c. Ad quem diem Mercurii coram dom' Reg' apud West, præd' ven' partes præd' per attorn' suos præd', & præf. justic' ad Assisas cor' quib' &c. mis. hic record' suum cor'. eis habit' in hæc verba. st. Postea die & loco infracont', cor' Th. Walmesley uno justic' dom' Reg' de banco, & Edw. Fenner uno justic diet dom' Reg' ad placita cor' ipsa Reg' tenend assign', justic' ejusdem dom' Reg' ad assis in com' Devon' capiend' assign' per formam Statuti &c. ven' tam infranominatus Joh. Slade per Thomam Clayton attorn' fuum, quam infrasc' H. Morley per H. Collier attorn' suum, & jur' jurat' unde infra fir mentio exact' similiter ven', qui ad veritatem de infracont' dicend' elect', triat' & jurat', dicunt super sacr'm faum, qd' præd' H. M. emillet de præf. J. S. infras. tritic' & filig'

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in bladis super infrasc. clauso ut præf. crescen' existen' pro 16 l. bonz & legalis monetz Angliz, folvend' eidem J. Slade in festo S. Joh' Bapt, tunc prox' sequen', prout in narrat' infrasc' interius specificat': Et ulterius iidem jur' dicunt super facr'm fuum præd', qd' inter eundem J. Slade & præf. Humf. Morley fuit nulla alia promissio & assumptio præter barganization' præd'; fed utrum fuper tota materia præd' per eofd'. jur' in forma præd' comperta præd' H. Morley affumpfit fuper se modo & forma in narr'infrasc'. interius specificat' necne, iidem jur' penitus ignorant, & inde pet' advisamentum & confiderationem Cur' hic &c. Et si super tota mater' præd' per ipsos jur' in forma præd' comperta, videbitur justic' & cur' hic', qd' præd' H. Morley affumpfit super se mod' & form' in narr' præd' interius specific', tunc iidem jur' dic' super sa-cramentum suum præd' qd' præd' H. Morley assumpsit super se mod' & forma prout præd' J. Slade interius vers. eum queritur & tunc affid' dampna ipsius J. Slade occasione non performationis promissionis & assumptionis infrasc. ultra mis. & custag' luz per ipsum circa seet' suam in hac parte apposit' ad 161. & pro mif. & custag. ill'ad 20 s. Et si super tota mater' præd'. per eosdem jur' in forma præd' comperta, videbitur eisdem justic' & cur' hic, qd' præd' H. Morley non assumpsit super se modo & forma in narr' præd' interius specific' tunc iidem jur' die super sacramentum suum qd' præd' Humf, non assumpsie super se modo & forma prout iidem Hums. interius allegavit: Et quia cur' dom' Reg' hic de judicio suo de & super præmissis reddendo nondum advisatur, dies in e dat' est partibus præd' in statu quo nunc cor' dom' Reg' apud West. usq; diem Lunz proxim' post quindena S. Trin. de judicio suo de & super præmiss audiend' eo qd' cur' dom' Reg' hic inde nondum &c. Et sic de Termino in Terminum, usq; diem Sabathi pror' post octab. S. Mich. de judicio suo de & super præmiss. audiendo, eo qd' cur' dom' Reg. hic nondum &c. Ad quem diem cor' dom' Reg' apud West. præd' ven' partes prædict' in propriis personis suis; Super quo vis. & per cur' dom' Reg' hic plenius intellectis omnibus & singulis præmiss. maturaq; deliberatione inde habita, pro eo qd' videt' cur' die dom' Reg. nune hie qd' præd' Humf. affumplit super se modo & form' in narr' præd' superius specific': Concess. est qd' præd' J. Slade recuperet versus prædict H. Morley dampna & custag. sua præd' per jur' præd' in forma præd' affeff. Necnon novem libr' pro mis, & custag' suis prædict eidem Joh. Slade per cur diet' dom' Reg. hic ex assensu suo de increndjudicar: Quæ quidem dampna in toto se attingunt ad vigint & sex libr', & Præd Humfrid Morley in misericordia &c.

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# Trin. 44 ELIZABETHÆ Regina.

### SLADE's Cafe.

Yelv. 20. Moor

Ohn Slade brought an Action on the Case in the King's Bench against Humfery Morley, (which Plea began Hill 38 Eliz. Rot. 305.) and declared, that whereas the Pl. 10 Nov. 36 Eliz. was possessed of a Close of Land in Halberton in the County of Devon called Rack Park, containing by Estimation 8 Acres for the Term of divers Years then and yet to come, and so possessed, the Pl. the said 10 Day of Nov. the faid Close had fowed with Wheat and Rie, which Wheat and Rie 8 Maii 37 Eliz, were grown into Blades. The Defendant in Consideration that the Pl. at the special Instance and Request of the said Humfry bargain'd and fold to him the faid Blades and Wheat and Rie growing upon the faid Close (the Tithes due to the Rector, &c. excepted) assumed and promised the Pl. to pay him 16 l. at the Feast of St. John Baptist then to come; and for Non-payment thereof at the said Feast of St. John Baptift, the Pl. brought the faid Action; The Def. pleaded Non assumpsit modo & forma; and on the Trial of this Issue the Jurors gave a special Verdict, f. That the Def. bought of the Pl. the Wheat and Rie in Blades growing upon the said Close as is aforesaid, prout in the said Declaration is alledged, and further found, that between the Pl. and the Def. there was no other Promise or Assumption but only the faid Bargain: And against the Maintenance of this Action divers Objections were made by John Dod-dridge of Council with the Def. 1. That the Pl. upon this Bargain might have ordinary Remedy by Action of Debt which is an Action formed in the Register, and therefore he shou'd not have an Action on the Case which is an extraordinary Action, and not limited within any certain Form in the Register; for ubi cessat remedium ordinarium, ibi decurritur ad extraordinarium, & nunquam decurritur ad extraordinarium ubi valet ordinarium, as appears by all our Books; Et nullus debet agere actionem de dolo, ubi alla actio subest. The second Objection was that the Mainte-

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14 C. CB mance of this Action takes away the Defr's Benefit of (4) Wa-(4) Co.Lit.2954 er of Law, and so bereaves him of the Benefit which the law gives him, which is his Birthright. For peradventure the Def. has paid or fatisfy'd the Pl. in private betwixt them, of which Payment or Satisfaction he has no Witness, and therefore it would be mischievous if he should not wage his Law in such Case. And that was the Reason (as 'twas said) that Debts by fimple Contract shall not be (b) forfeited to the (b) Poftea 95.2. King by Outlawry or Attainder, because then by the King's 2 Rolls 806. Prerogative the Subject would be ousted of his Wager of Law, Cr. El. 203, 575, which is his Birthright, as it is held in 40 E. 3. 5. a. 50 As. I. Stamf. Cor. 188.2. 16 E. 4. 4. b. & 9 Eliz. Dyer 262. and if the King shall lose Dyer 262. pl the Forfeiture and the Debt in fuch Case, and the Debtor by 2 Vent. 282. Judgment of the Law shall be rather discharg'd of his Debt, Hard 226. before he shall be depriv'd of the Benefit which the Law 155,176.11co.64. gives him for his Discharge, altho' in Truth the Debt was due and payable; a fortiori in the Case at Bar, the Def. shall not be charg'd in an Action in which he shall be ousted of his Law when he may charge him in an Action, in which he may have the Benefit of it: And as to these Objections, the Courts of King's Bench and Common Pleas were divided; for the Justices of the King's Bench held that the Action (norwithstanding such Objections) was maintainable, and the Court of Common Pleas held the contrary. And for the Honour of the Law, and for the Quiet of the Subject in the appealing of fuch Diversity of Opinions (Quia ni in lege intolerabilius est eandem rem diverso jure censeri) the Case was openly argu'd before all the Justices of England, and Barons of the Exchequer, f. Sir John Popham Knt. C. J. of England, Sir Edm. Ander son Knt. C. J. of the Common Pleas, Sir W. Perlam Chief Baron of the Exchequer, Clark, Gawdy, Walmesley, Fenner, King Smill, Savil, Warburton, and Telverton in the Exchequer Chamber, by the Queen's Attorney-Geneal for the Pl. and by John Doddridge for the Def. and at anoher Time the Case was argu'd at Serjeants Inn before all the aid Justices and Barons by the Attorney General for the Pl. ind by Fran, Bacon for the Def. and after many Conferences etween the Justices and Barons, it was refolv'd, that the action was maintainable, and that the Pl. should have Judgent. And in this Case these Points were resolv'd. 1. That ltho' an Action of Debt lies upon the Contract, yet the Barinor may have an Action on the Case or an Action of Debt (6) Yelv. 20. this Election, and that for three Reasons or Causes. 1. In Moor 433, 667. tespect of infinite Presidents (which George Kemp, Esq; Se-2 Rolls Rep. 292, andary of the Prothonotaries of the King's Bench shew'd 3 Bulft. 237. e) as well in the Court of Common Pleas as in the Court Cr. Car.527,540. King's Bench, in the Reigns of King H. 6. E. 4. H. 7. 6. Cr. El. 454, 756. 4.8. by which it appears, That the Plaintiffs declared Dy. 21. pl. 125.

At the Defendants in Confideration of a Sale to them of 2 Sid. 169.

Noy 59. Mo. 694 stain Goods, promised to pay so much Money, &c. in which

Cases the Plaintiffs had Judgment. To which Presidents and Judgments being of fo great Number, in fo many Successions of Ages, and in the several Times of so many reverend Judges, the Justices in this Case gave great Regard: and fo the Justices in ancient Times, and from Time to Time did, as well in Matters of Form as in deciding of Doubts and Questions as well at the Com. Law, as in Construction of Acts of Parliament, and theref. in II E. 3. Formed. 32. it is held, that the ancient Forms and Manner of Presidents are to be maintain'd and observ'd; and in 34 Ass. 7. that which has not been according to Usage shall not be permitted, and in 2 E. 3. 29. the ancient Form and Order is to be observ'd. In 39 H.6. 30. the Opin. of Prifor & tot' Cur' was, that in a Writ of Mefn the Pl. ought to surmise the Tenure between the Lord paramount and the Mesn, as well as between the Mesn and the Tenant, and shew there divers Reasons and Causes of their Opinions, but when the Justices were inform'd by the Protho. notaries, that the Book call'd Les Tales, contain'd the Form. that had always in fuch Cases been used, the Book saith, that the Justices resolv'd, that they would not change the Usage notwithstanding their Opinion was to the contrary, and according to the Prefidents they awarded the Count good: 4 E.4. 44. In a Writ of Error brought by John Paston to reverse an Outlawry against him, he did not surmise in the Writat whose Suit he was outlaw'd, and all the Justices said it was a strange Writ, and no Certainty supposed thereby; for by the Writ it did not appear whether he was outlaw'd at the Suit of the Party, or at the K's Suit, or in what Suit, or for what Thing, and it might be that he was outlaw'd for Felony, Debt, Trespass, account or fine to the K. but when the Court was inform'd that the ancient Form was such, then they chang'd their Opinion and awarded the Writ good, and refolv'd, that common Course makes a Law, altho' now as 'twas theresaid, perhaps Reason willeth the contrary, but there the Justices faid, We can't change the Law now, for that would be inconvenient, and therewith agrees Long 5 E. 4. 1. where it is faid that the Course of a Court makes a Law : Vide 20 3 Phil. of Mar. 120. The Statute of W. 2. cap. 12. Quod Juffic corns quib' format' erit appellum & terminat' shall enquire of Dame ges where the Def. is acquitted, yet Presidents expound the Law against the express Letter, f. that Justices of Nifepri (before whom the Appeal was not began) shall do it, and many others to this Effect are in our Books; but forasmuch as Pro sidents are not always allowable, for in our Books the Judge reject some Presidents, see a notable Case in Long 5 E. 4.110 for certain Rules and Differences in this Matter, there it agreed, that where a Question was of a Retorn of an Affile, and 2 or 3 Presid. were shew'd, which agreed with the said Reman and the Justices said, that two or three Presidents do 10 make a Law, nor a Custom, especially when there are hel in Court forty and more Presidents to the contrary; but! there was no President to the contrary, it was another Mat deliver

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Case both Parties may have an Action of Debt, or an Action on the Case on Assumpte, for the mutual executory A. greement of both Parties imports in it felf reciprocal Action upon the Case, as well as Action of Debr, and there-

with agrees the Judgment in Read & Norwood's Cafe, Ph.

Com. 128. 4. It was refolved, that the Pl. in this Action

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Aff. I:

Dod. pla. 67.

on the Case on Assumption shou'd not recover only Damages for the special Loss (if any be) which he had, but also for the whole Debt, so that a Recovery or Bar in this Action wou'd be a good \* Bar in an Action of Debt brought upon the same Contract; so via versa, a Recovery or Bar in an Action of Debt is a good Bar in an Action on the Cafe on Assumpfit, Vide 12 E. 4. 13. a. 2 R. 3. 14. 33 H. 8. Action sur le Case Br. 105. 5. In some Cases it wou'd be mischiev. if an Action of Debt shou'd be only brought, and not an Action on the Case, as in the Case inter Redman or Peck, 2 & 3 Pb. & Mar. Dyer 113. they bargain'd together that for a certain Confideration Redman shou'd deliver to Peck 20 Quarters of Barley yearly during his Life, and for Non-delivery in one Year it is adjudged that an Action well lies, or otherwise it wou'd be mischievous to Peck, for if he shou'd be driven to his Action of Debt, then he himself could never have it, but his Executors or Administrators, for Debt doth not lie in such Case till all the Days are incurred, and that wou'd be contrary to the Bargain and Intent of the Parties, for Peck provides it yearly for his necessary Use: So 5 Mar. Br. Action fur le Case 108. that if a Sum is given in Marriage to be paid at several Days, an Action upon the Case lies for Non-payment at the first Day, but no Action of Debt lies in such Gase (4) (a) 3 Co. 22. 2. the nrn Day, but no rection of Dotter good in these Days 5 Co. 81. b. 8 Co. till all the Days are past. Also it is good in these Days 128. b. 1 Brown in as many Cases as may be done by the Law, to out the 62, 63. Co. Lie. Def. of his (a) Law, and to try it by the Country, for 47. b. 292. b.

F. N. B. 130, otherwise it wou'd be occasion of much rejuly. C. 131. 2. 131. h. said that an Action on the Case on Assumpti is as well a Yelv. 67. 1 Leon. formed Action and contained in the Register, as an Action 107, 108, 131. of Debt, for there is its Form; Also it appears in diven Moor 13. 3 Leon. other Cases in the Register, that an Action on the Case other formed Action in 4. 4 Leon. 13. Other Cases in the Register, that an Action on the Case Owen 40. Benl. will lie, altho' the Pl. may have another formed Action in Ass. pl. 8. the Register, F. N. B. 94. g. & Register 103. b. If a Man has N. Benl. 57. pl. a Manor within any Honour, and has a Leet within his 33. Benl. in Manor of his Tenants, if he or his Tenants are distrained Cro. El. 118, 276. 807. by the Lord of the Honour to come to the Leet of the Honour to c by the Lord of the Honour to come to the Leet of the Ho nour, he who is so distrained may have a general Writ of Trespass, or a special Writ upon his Case: So if any Office takes Toll of him who ought to be quit of Toll, he shall have a general Writ of Trespass, or an Action upon his Cale as appears by Fitz.ib. 94. And if a Prior or other Prelate is it ding in his Journey, and one distrains his Horse upon which

119, 776, 807. Cro. Jac. 505. Cro. Car. 421. 2 Rol. 22, 601. 1 Rol. Rep. 221. 2 Rol. Rep. 221. le Cafe 108. in fine, 2 Sand-337.

Larch. 216.

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e is riding when he may distrain other Goods, he may have general Action of Trespass or an Action upon his Case, as spears in the Register 100. b. & F. N. B. 93. H. If the sheriff suffers one in Execution upon a Statute Merchant to escape, the Conusee may have an Action of Debt, (a) or (a) Cro. Car. M Action on the Case, as appears by the Register 38. b. & F. N. R. 93. B. C. So if a Man oufts the Executors of his lese for Years of their Term, they may have a special Writ upon their Case, as appears F. N. B. 92 G. & Register of and yet they may have Ejectione firma, or Trespass. And therefore it was concluded that in all Cases when the Reeifer has two Writs for one and the same Case, it is in me Party's Election to take either . But the Register has (b) (b) Dyer 21. pl. two several Actions, s. Action upon the Case upon Assumpa, and also an Action of Debt, and therefore the Party may elect either. And as to the Objection which has been made that it wou'd be mischievous to the Def. that he shou'd not (1) wage his Law, for as much as he might pay it in fecret: To that it was answered, that it shou'd be accounted his (c) Co. Lit. Folly that he did not take sufficient Witnesses with him to 395. 2. 9 Co. prove the Payment he made; But the Mischief wou'd be rather on the other Party, for now Experience proves that Men's Consciences grow so large, that the Respect of their private Advantage rather induces Men (and chiefly those the have declining Estates) to Perjury; for Jurare in proris causa (as one saith) est sapenumero hoc seculo pracipi-im diaboli ad destruendas miserorum animas ad infernum: and therefore in Debt, or other Action where Wager of aw is admitted by the Law, the Judges without good Adnonition and due Examination of the Party do not admit in to it. And as to the Case which was cited, that Debts or Duties due by fingle Contract where the Party wage his Law shall not be (d) forfeited by Outlawry, (d) 2 Vent. 282. eause the Debtor will be thereby oussed of his Law; To Antea 93, a. hat it was answered by the Attorney-General, that in such 2 Rol. 806. Cro. lase by the Law Debts or Duties shall be forseited to the 203. Cro. Carling, and so are the better Opinions of the Books, s. 3 E. 3. 187. Stams. Cor. 189. a. Dyer. 189. 243. 19 E. 2. Avowry 223. If the Tenant of a Prior 262. pl. 31. lien is amerced for Default of Suit to the Court Baron, Hard. 226. Wentworth 23. is Debt due for the Amercement, yet in an Action of Debt 1 Leon. 64.

nought for it by the Prior Alien, he shall have his (e) Law, Moor 276, 277.

it was adjudged 6 E. 6. in Serjeant Bendloe's Reports, 1 Leon, 203, 204. dinfinite Presidents in all Ages in the Exchequer, which have feen, approve it, and so it was now lately resolin the Exchequer, and so it was held in this Case by them, Anderson, and divers other Justices with whom I Aff. 1: 16 E. 4. 4. 6 9 Eliz. 262. (f) and so you have pl. 31.

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a Doubt in our Books well refolved. Et noth Reader, ) Co. 85.2 every (a) Que minus in the Exchequer brought by the K Debtor against one who is indebted to him on a simple Contract, the Defendant shall not have his Law, for the Benefit of the King, as appears in 8 H. 5. Ley 66. 20 E. Ley 52. 10 H. 7. 6. and yet there the King is not Part a fortiori when fuch Debt or Duty is forfeited to the Kin and the King is the fole and immediate Party: Et no Reader, this Resolution as to this Point agrees with the Judicial Law of God, upon which our Law is in the Point grounded, for it appears by the 22 Chapter of Ex dus ver. 7. Si quis commendaverit Amico pecuniam, &c. vers. 10. Si quis commendaverit Proximo suo Asinum, Bove Ovem, & omne Jumentum ad Cuftodiam, & mortuum fun aut debilitatum aut captum ab Hostibus, nullusque hoc viden Jusjurandum erit in medio 9d' non extenderit manum ad Ro Proximi Jui, suscipietque Dominus Jaramentum & ille redde non cogetur; by which it appears that it is in the Election of the Plaintiff, either to charge the Defendant by Withd if he will and to oust him of his Law, or to refer it the Defendant's Oath; for the Text saith, Nullusque boch derit, s. if there be no Witnesses, so by our Law in the fame Case put in the Text, the Owner has Election ther to bring an Action on the Case in which the Def car wage his Law, or an Action of Detinue in which he ma Et jusjurandum in hoc casu est finis: for the Plaintiff is bour thereby, and it is the End of the Controversy. And la furpriz'd that in these Days so little Consideration is me of an Oath, as I daily observe; Cum jurare per Deum at religionis sit, quo Deus testis adhibetur tanquam is qui sit nium rerum maximus, &c. Note Reader, for Witnesses Acquittance.

Strate and Director

# Termino sancti Hillarii, Anno ELIZABETHÆ Reginæ 40. Rot. 748.

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### ADAMS and LAMBERT's Cafe.

Emorandum qd' al's scilicet Termino sancti Michaelis ultimo præterito, coram domina Regina apud West. ven' The. Adams gener' per J. Povey attorn' fum, & protul' hic in cur' dicta dom' Reg. tunc ibidem uand billam suam vers. Joh. Lambert in custod' Mar' &c. e pl'ito transgr' & ejectionis firmæ; Et sunt pleg. de prosequend', scz. Jo. Doo, & R. Roo; Quæ quid' billa sequitur in hæc verba, ss. Buck. ss. T. Adams gen', querit' de J. Lamb. in custod' Marr' Maresc' dom' Reg. coram ipsa Reg. etisten', pro eo viz.quod cum quidam R. Snelling gen' & T. butler gen', 23. die Maii ann. regni dom. Eliz. Reg. nunc Ang. 36. apud villam Buck. in com. præd', dimisissent & ad sirmam tradidissent eid' Theoph. unum mesuag. & 10. r past' cum pertin' eid' mesuag. prox. adjacen', voc' the Conigree, scituat', jacen', & existen' in villa de Buck. præd' in com' præd'; Habend' eid' Theop. & assign' suis, a præd' 23. die Maii ann' 36. suprad', usque finem & term' 10. anor extune prox. sequen' & plenar' complend' & finiend'; urtute cuj' quid' dimission' idem Theo. postea, sc. 16. die April. an. regni dict' dom. Reg. nunc 39. in ten'ta præd' um pert' intravit, & fuit inde possession', quousque præd' lo Lamb. postea, sc'eod' 16. die Apr. an. 39. suprad', vi & rmis &c. in ten'ta præd' cum pertin' super possession' ipsi Thee inde intravit, & ipf. The. a firma fua præd' inde tem' suo præd' inde nond' finito ejecit, expulit, & amovit, plumque Theo. a possess. sua inde extratenuit, & adhuc stratenet, & alia enormia ei intulit cont' pac' diet Dom' Reg' nunc ad dampnum ipsius The. 20. li. Et inde moducit sectam &c. Et modo ad hunc diem, scz. diem lun. proxi post octab. S. Hill. isto eod' Term'; usque quem hem præd' J. Lam. habuit licen' ad bill' præd' interloquen' & tunc

tune ad respond' &cc. coram dom' reg. apud West. venit tam pred' T. Adams per attorn' fuum præd', quam præd' J. Lam. per J. Harborne attorn' suum, & idem J. Lambert defend' vim & injur' quando, &c. Et dicit quod ipse non est inde culpabil', & de hoc pon' se super Patriam; Et præd' The die Lun. prox. post crastin. Purification' beate Marie, per quos &c. Et qui nec &c. ad recognoscend' &c. Quia tam &c. Idem dies dat' est partibus præd' ibidem &c. De quo die Jur' præd' inter partes præd' de placito præd' posit suit in respect' coram dom. reg. apud West. usque diem Lunz prox. post mensem Pasc. anno regni dica dom' reg. nune 41. pro defectu Jur &c. Ad quem diem coram eadem dom. reg. apud West. ven' partes præd' per attorn' suos præd', Et Jur' jurat' illius exact' similiter ven', qui ad veritatem de præmissis dicend' electi, triati, & jurati, dicunt super sacramentum suum, quod diu ante præd' tempus transgressionis & ejectionis præd', scz. 5. die Mensis Junii anno dom, millesimo quadringentesimo tricelimo primo, annoque regni reg. H. 6. post conquest' Angl' nono, quidam Jo. Barton sen. fuit seisitus de præd' mesuag. ac de 6. acris pasturz parcell', præd' 10. acrar' pasturæ in narratione præd' specificat', in quibus supponit' transgress. & ejectionem præd' fieri inter alia in dominico suo ut de feodo, & sic inde seisit' existen' de mesuag. præd' & præd' sex acris pasturæ cum pertinen parcell' &c. feoffavit W. Brampton; Habendum & tenendum fibi & hæredibus fuis, ad opus & usum præf. J. Barton fenioris & hæred' fuorum : virtute cuj' præf. W. Brampton fait seisit' de mess. & 6. acris pasturz præd' parc' &c. cum pertinentiis in dominico suo ut de feodo, ad usum præf. J. Bart. & hæred' fuor', præfatoq; W. Brampt. sic inde seisit' existen', præd' J. Bart. postea, scz. diet' 5 die menti Junii, anno dom. millesimo quadringentesimo tricesimo primo, dictoque anno regni dicti nuper reg. H. 6. nono supra apud Buck. præd' condidit Testament' & ultim' voluntat &c. inter alia in hæc verba &c. In Dei nomine, Amen. IL die mensis Junii, anno dom. millesimo quadringentelim tricelimo primo, regni vero reg. H. 6. post conquestum An gliz nono; Ego Johan. Barton fenior compos mentis fanz memoriz existens, condo, facio, & ordino prasen Testament' meum indentat' ultimam meam continens vo luntat' in hunc modum. Imprimis, lego & recommend' nimam meam Deo & omnipotenti creatori & falvatori me beatzque Mariz virg. matri ejus, & omnibus Sanctis, cor pusque meum ad sepeliend' in ecclesia beati Petri apost. Buck, sf. in ecclesia S. Romwoldi, eod' loco quo petral marmoream pro mea sepultura ordinavi & constitui, & pr hac fepultura mea ibid' habend', ego fabrica corpor

Ecclesia 40 s. Item volo & ordino, quod festinanter obitum meum celebrentur pro anima mea 4000 misse, quibus celebrand' lego 16 li. 13 s. 4 d. Et pro labore us qui se circa hoc occupaverit, ut plene fidelit & feant' perimpleat', 6 s. 8 d. Item lego viris religiosis subpris, ut ipli quam cito per executores meos seu corum ntat' de obitu meo præmoneant', tam festinanter quo mode fieri poterir, quilibet ordo corum dicar Placeto & ige per notam, & die fequen' missam de requiem cum notaanima mea animabus patris mei & matris mez, amium & benefactorum meorum, & animabus omnium fidem defunct, viz. Magistro & confratribus domus & Eciz fanctæ Thom, Martiris Cantuar' dict' de Acon' Lon-40 s. Magistro & confrattibus hospital sc'i Barth. in Smithfield London 40 s. Abbati & conventui de Beten in com. Buck. 100 s. Priori & conventui de Luffeild Priori & conventui de Cheitwood 40 s. Priori & conqui de Snelfale 20 s. Cuilibet ordini quatuor ordinum framendican' in villa Northt' 20 s. cuilibet ordini qua= ordin' fratr' mendican' in villa Oxon' 20 s. conmi fratrum minor' de Aylesbury 20 s. cuil't ordini que ordin' fratrum in civit' Lond' 20 s. Item lego fraoh. Upton 100 s. ut ipse pro anima mea celebret per ann' integrum prox. post obitum meum. Et volo qd es religioss præd' per executores meos aut eorum deputat' ntur, qd pro anima mea specialit' orent. Item do & lo. Barton junior' fratri meo omnia Tenementa mea, cum omnibus tenementis quæ quondam fuerunt Rogs et que perquifivit, cum reddit, & ferviciis, una cum nibus & omnibus suis pertinentiis in villa de Buck. m' Buck. Habendum & tenendum omnia tenem' præd' pertinen' præf. Joh. fratri meo ad terminum vitæ fuz, inditionibus subsequen' viz. Quod'idem Johan. frater durant' vita sua, inveniat unum Capellanum idoneum' estum pro anima mea, animabus patris mei, matris intrum, fororum, benefactorum, & amicorum meor', nium fidelium defunctorum, ad altare Sancti Jacobi in Ecclesia beati Petri quotidie celebratur'. Et volo & qd' prædict' Capellanus fingulis diebus festivalibus maturinis & vesperis in Choro Ecclesia prad': Ac ordino qd' dict. Capellanus omni die infra Ecclesiam dicat Matutinas de sanct' Maria, & sequentur Made die cum cæteris horis canonicis, & illis fic finicat ipse Capellanus qualibet die antequam ierit ad unam portion' de Pfalter' Davitico; Ita femper qd' Capell', qualibet sept' dicat' unum integr' Psalterium cum, & postmod' quotidie cum infirmit' non gravetur! tad millam, que miss finita antequam recedat ab Al-

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tare dicat Pfalm' De profundis cum oratione Inclina: Et quotidie post prand' quando sibi melius videbitur expedire, licat ipfe Capellan' infra diet' Eccles. beati Petri Placebo & Dirige, cum novem lectionibus, tempore Paschal' except', quo vero tempor. Paschali dicat ipse Officium mortuor', cum 3. lectionibus secund' usum Sarum, & subsequent' omni die hm'di tempore Paschali Psalterium besta Mar' virgin', sequenturque commendationes Animar cum oratione Tibi dom' commendamus : Postea vero dicat ipse vesperas de die, sequenturque vesperas de sancta Mar': Et quod ipse Capellan' insiemitat' minime impeditus, quolibet die quo defecerit in Missa sua in diet' Eccl'ia S. Pe. dicend', det & eroget uni pauperi de vill' de Buck.-præd' 1 d. Volo insuper quod diet' apell' moram continuam faciat ibid', habeat tamen ipfe Capellan' quolibet anno recreationem per spacium 15 die. rum: Ita semper qd'ipse Capell' per un' alium-capell' vices fuas suppleri fecerit, aut quolibet die illarum 15 dier' det uni pauperi de villa de Buck. 1 d. Et volo quod præd' Jo. frater meus annuat' durante vita sua persolvat dicto Capell' in præd' Eccl'ia beati Pet', pro sua sustentatione & hm'di fuis laboribus ut præfert' exercend' & perficiend' 10 Marcas bonæ & legalis Monetæ Angliæ, de exit' & provent' tent' præd' cum pertin': Ita semper qd' idem Capell' hujusmodi fumma 10 Marcas pro suo salario sive stipend' se reputet content', a nullo alio aliquod flipend' recipiend', aut percipiend'. Et volo & ordino ego Jo. Barton sen' Testator antedie, qd' dietus Capellan' & successores sui ad officium & fervic' supradict. elegantur, ordinent', perficiantur, admittant', & recipiantur, per Magist. & confratres domus sive Eccl'iz S. Tho. Martir' Cantuar' diet' de Acon' Lond. fuprad'; & success. suos imperpet': Et etiam si minus bene vel inhoneste se gerant, & habeant, aut si onera præd facere & perimplere neglexerint.vel recusaverint, per eosd. Magist. & confratres & eorum success. five per eorum sufficient deputat', a dicto officio sive servicio amoveantur, & expell, seu salrem is eorum qui culpabil' in præmissis reperitur amoveatur & expellat', & alius Capell. idoneus loco iplius Capell' sic propt' suos defect' amoti, expulsi, sive per mort deceden', aut aliter qualitercunque ab hm'di officio sive fervicio cessant' five recedent', per præf. Mag. & confratres domus sive Eccles. S. Thomæ præd' & success suos elegatur, ordinetur, præsiciat', admittatur, & recipiatur: Ita quod dn's Episc. Lincoln' qui pro tempore suerit, aut Archidis. con' loci, seu Przbend' przbendz de Buck. seu aliquis alius corum nomine, super electione, ordinatione, præfectione, admittione, & receptione, vel amotione dieti capell', nullam jurisdictionem aut potestatem habeant aut vindicent in futurum quoquo modo: Ideo provideant dieli Magist' & confratres, & corum

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rum success. sub animarum suar' periculo, & sicut coram fummo Judice respondere voluerunt, qd' nec favore, amore, prece, vel pretio, aliquem Capellan' ad prædict' officium five servicium ordinent, admittent, seu recipient, nisi honestam & probatam personam in quantum ejus conversatio sibi przstare poterit; Et qd' dietus Capellan' ad hujusmodi officium five servitium admittend' in prima sua admissione præf. Magistro & Confratribus domus & Eccl'iz sancti Tho. præd', ac corum successor', taet' sacrosanctis Evangeliis, juramentum præftet corporale ad omnia & fingula onera prædict' fine fraude & dolo, aut aliqua dispensatione super eisdem in contrarium impetrand' modo & forma superius declarat' bene & fidelit' faciend' & perimplend', in quantum fragi-licas permittat humana: Et qd' quilibet Capell' ad diel' officium five fervitium admistend', in fua prima admissione inveniat & faciat Magistro & confratribus domus & Eccl'ia fand' Thoma Martir' Cantuar' diet' de Acon' London' supradict' pro tempor' existen', sufficien' securitat' pro ornamentis dicti altaris sc'i Jacobi pertinen' salvo & secure cuflodiend', ac in suis recess. sive cess. sursum reddend', & deliberand'. Et insuper qd' diet' Joh. frater meus durante vita sua, inveniat in villa prædict' sex pauperes homines five faminas ad orand', pro anima mea & animabus fuprad' singulis diebus imperpetuum ; Et quod det qualibet septimana durante vita fua cuilibet ipforum pauperum quatuor denarios, & etiam cuiliber eorum mansionem prout (Deo disponente) pro eis constitui & ordinavi. Ac etiam qd' idem Johannes frater meus, tota vita sua inveniat unum l'ampad' ardentem fingulis diebus & noclibus, coram Sancto Romwaldo in Ecclesia beati Petri antedicti, prout modo inventus est & sustentatus. Et qd' idem Jo. frater meus durante vita sua, teneat seu tenere faciat anniversar meum, patris mei, & matris mez, annuat' in die translationis sancti Benedicti in Ecclesia beati Petri antedict', in quo quidem anniversario inveniet idem Johannes frater meus annuat' duos cereos nocte ad Dirige, & die sequen' ad miss. unum scilicet ad caput & alterum ad pedes sepulturæ meæ ardentes, quoabet cereo ponderan' tres libras; Quibus exequiis meis completis, volo quod totum id quod de dictis cereis resid' fueit, dimittatur & remaneat Altari fancti Jacobi præd' super andelabr' ibidem existen' Capell' Cantariæ meæ supradict' ingulis diebus festivis, ad missam quamdiu durare poterit eservitur'; Et quod prædictus Johannes frater meus tota vita sua durante, inveniat annuatim unum torcherum comten ad altare prædictum deservitur': Et volo quod ompræd' tenementa, reddit', & servicia, cum reversioni-& omnibus suis pertinentiis post Mortem dicti Jolannis fratris mei, integre remaneant Margaretz & Ha-

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belle fororibus meis, ad totum terminum vitarum ear', & earum alterius diutius viven'; Tenend' de capitalibus do-minis feod' illius per servicia inde debit' & de jure consuet', sub conditione quod eadem Margareta & Isabella ear' vita duran', faciant perimpleant & observent omnia & fingula onera superius limitat' in forma præd': Et post mort' præd' Margaretæ & Isabellæ, volo quod omnia prædict' ten' reddit' & servicia; cum reversionibus & omnibus suis pertinentiis, integre reman' Willihel. Fowler; Tenend' fibi & hzredibus suis de corpore suo legitime procreatis, de capitalibus dominis Feod' illius per fervicia inde debit' & de jure confuet'; Sub conditione qd' ipse Willihel. & hæred' sui prædict', faciant perimpleant & observent omnia & singula onera suprascripta in forma antedicta imperpetuum. Et faciant perimpleant & observent omnia & singula si contingat prædict' Willihelmum Fowler fine hæred' de corpore suo legitime procreat' obire, quod extunc omnia prædict' tenementa reddit' servicia cum reversionibus & omnibus suis pertinentiis, integre reman' Johanni Somerton' consanguin' meo, & hæredihus suis de corpore suo legitime exeun'; Tenend' de capitalibus dominis Feodi illius per fervicia inde debit' & de jure consuet'; Sub conditione quod ipse Johannes Somerton & hæred' fui, omnia & singula onera suprascripta in forma prædict' perimpleant & observent imperpetuum; Et si ipsum Johannem Somerton absque hared' de corpore suo legitime exeunt' obire contingerit, qd' extunc omnia prædicta tenementa reddit' & fervitia cum reversionibus & omnibus suis pertinentiis, integre remaneant Willihel' Purfrey confanguin' meo & hæred' fuis de corpore suo legitime exeun': Tenend' de capitalibus dominis Feod' illius per servic' inde debit' & de jure consuet': Sub conditione quod idem Willihel' Purfrey & hæred' sui prædict' faciant perimpleant & observent omnia & singula onera supradiet' in forma antediet' imperpetuum. Et si contingat prædie Willihel. Purfrey obire sine hæred' de corpore suo legitime exeun', extunc do & lego ac volo, quod omnia præd' tenementa reddit' & servic' cum Revers. ac omnibus suis pertinentiis, integre reman' Magistro domus Sancti Thom' Martiris de Acon' London supradict: Habend' & tenend' fibi & successor' suis Magistris illius domus sancti Tho. ad termin' & finem quadraginta annorum extunc prox. fequen', & plenarie complend'. Et post termin' prædict' finit, quod omnia tenementa præd' reddit' & servic' cum reversionibus & omnibus suis pertin', reman' Magistro hospitalis S. Barth. in Westsmithsield London supradicto: Habendum & tenendum eidem Magistro & successoribus suis Magistris dien hospitalis S. Barth. ad terminum & finem quadraginta annorum extunc prox. fequen', & plenar' complend'; Cuilibet

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corum sub' conditione subsequen', viz. quod quilibet ipsor' magist' & successor' suorum durant' eorum termin', faciat & perimpleat omnia & singula onera supralimit' in forma suprad': Et fi contingat præd' Joh. fratrem meum durant' vita sua in perficiend' onera præd' deficer', seu illa non perimplere, aut omnia præd' ten'ta durante vita sua non competenter sustentare, & reparare, seu ea aut aliquam parcell' corundem alienare, sive ad parvum valorem ea dimittere, in præjudicium cæterarum personar' in remaner' suprad' nominat; Qd' extunc bene liceat præf. Margar. & Isab. in prædiet' ten't', reddit', & servic', cum reversionibus & o'ibus suis pertin' intrare, & ea retinere ut in remanere suum præd' absque contradictione alicujus; Et quod extunc status præd' Joh, fratris mei omnino cesser, & nullius sit valoris: Et si contingat præd' Margar. & Isab. durante vita earum in persiciend' & perimplend' o'ia oner' præd' deficere, aut ill' non perimplere, seu omnia tenementa præd' duran' earum vita competenter non sustentare & reparere, sive illa alienare vel dimittere ut supradict' est, aut negligentes sint ad intrand' si causa ut supradict' est evener', quod extunc bene licebit antedict' Willihelm' Fowler & hæred' suis præd', in omhia supradict' ten'ta, reddit' & servic' cum reversionibus & o'bus suis pertinen' intrare ut in remaner' suum prædict', & illa retinere absque contradictione aliquali: Et quod extunc status prædict' Margar. & Isabell, ut præd'est omnino cellet, & nullius fit valoris; Et fi præd' Will. Fowler aut hared' sui præd' in faciend' & perficiend' omnia & singula onera præd deficere, feu non perimplere, aut omnia præd' ten'ta competenter non sustentaver' & reparaver', vel ill' alienaver' seu dimisser' ut præfert', sive negligentes sint ad inttand' si causa ut pramittitur evener'; Qd' extunc bene lic suprad' Joh. Summerton & hæred' suis supradiel' in omnia præd' ten'ta, redd', & servic', cum reversionibus & omnibus. spis pertin' intrare ut in remaner' suum præd' & ill' retiner' absque contradict'aliquali, Et qd'extunc status præd' W. Fow. & hared' fuor' præd' ut præf. cellet, & nullius lit valoris Et si contingat præd' J. Summerton aut hæred' suos præd' in faciend' & perficiend' omnia & singula onera præd' desicere leu ea non perimplere, sive omnia præd' ten'ta non competent' sustentare & reparere, vel ill' alienare sive dimittere ut suprad'est, vel negligentes sint ad intrand' il causa ut supradict' est evener'; Quod extunc bene licebit anted' W. Purf. & hæred' suis prædict', in omnia ten'ta præd' redd' fervic' cum reversionibus & omnibus suis pert' intrare, ut in reman' suum præd', & ill' retin' absque contrad' aliquali; Et quod extunc stat' præd' Joh. Summerton & hæredum suorum præd' in omnibus tenementis prædict' omnino cellet, & nullius fit valor': Et fi conting' præd' W. Purfrey, & hæred' fuos præd' in perfic' o'ia & fing' onera præd' deficere, seu ea non perimpl', aut o'ia præd' ten'ta non competentes.

sustentare & reparare, vel illa alienare five demittere ut fuprad' eft aut negligentes fint ad intrand' fi causa ut prafertur evenerir; Quod tunc status ipsius W. Purfrey & hæred' fuorum omnino cesset, & nullius sit valoris; Et quod tune bene licebit præf. Magistro domus sancti Martiris de Acon' London & confratribus ejufdem domus ac eorum fuccessor', in omnia prædict' ten'ta redd' & servic' cum reversionibus & omnibus fuis pertin' intrare, ut in reman' fuum term' fui præd'; Tenend' in forma 'antediet': Et si contingat præd' Magistrum & confratres domus S. Thomæ præd' seu succes. fores fuos præd', in faciend' & perficiend' omnia & fingulaonera superius specificat' desicere, seu ea non perimplere, aut omnia ten'ta præd' ut supradiet' est non competenter fustentare & reparare, vel negligentes fint ad intrand' fi causa evenerit ut præd' est, quod extunc bene licebit Magiftr' hospitalis S. Barth. suprad. & confratribus ejusdem hospitalis ac eorum successor', in omnia prædict' ten'ta reddit' & servic', cum reversionibus & omnibus suis pertin' intrar' ut in remaner' suum termini sui præd', & extunc cesset status dicti Magistri domus S. Thomæ suprad': Et si contingat præd' Magistrum & confratres hospitalis S. Barth. præd', in faciend' & perficiend' omnia & fingula onera superius declarat' deficere, seu ea non perimplere, aut omnia ten'ta fuprad' non competenter sustentare & reparare, quod extunc bene licebit rectis hæred' meis in omnia prædict' ten'ta, redd', & fervic', cum reversionibus & omnibus suis pertin' intrare, & illa retinere, absque contradictione quacunque imperpetuum; Supportando omnia onera præd' ut suprad' eft, prout voluerint pro me & se coram summo Judice refpondere. Et quia hæc mea volunt' pro bona animar patris & matris meor', anima etiam mea, animabufque fratr' foror' parent' & benefactor' nostror' edita fuit & ordinata, precor & oner' præd' Joh. fratrem meum, prout pro me & se voluerit respondere, quod ipsa tota vita sua diligent' supervident gubernation' Cantariæ suprad', & qd' omnia onera præscripta & in hac mea ultima volunt' declar' inviolabil' perimpleant' & conservent': Et quod notitiam faciat omnibus hiis qui in remaner' præd' flatum habebunt in die ten't', redd', & fervic' cum reversionibus & omnibus fuis pertin', ut iph cognoscant tenor' & effectum testament' et ultima mea volunt': Et volo quod Feoffati mei de tent cum fais pert' quod mei pauperes homines modo inhabitant, pro eo qd' non est divisible, faciant tal' statum post mortem meam omnibus illis supranominat', prout Habent ex meo legato de & in tenementis in Buck. præd', ad usum prædie pauperum ibidem habitantium, supportand reparation' illius ten'ti prædict' pauperum quociens indiger': Et quia dubito ne tenementa supradiet' sufficiant ad supportand' omnia suprad' onera causa grandis custus reparac' eorundem, volo quod Feoffar' mei statim post mortem meam faciant

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telem statum omnibus illis supranominatis, de omnibus illis terr' & ten'tis meis in villis de Bourton, Moreton, Gavecote, cum prebend' Lenburgh, Thorneborough, Hillesden, Warerstradtord, Shaldeston, & Foycote in com. Buck. ac de amnibus illis terr' cum pert' in campis de Buck. necnon de omnibus terris & ten'tis meis in Worton in com. Oxon. ac de uno ten'to meo in villa Oxon. in quibus Feoffat' extiterunt, prout habent ex meo legato de & in ten'tis de Buck. præd' Ita qd' sufficienter omnia onera præd' possint sustenare & etiam pro labore inde rationabilit percipere & obtinere: Item volo quod execut' mei aut aliquis eorum juxta corum affignation' in die Parasceves prox. post obit' meum contingen', faciant ipf. qui ad crucem in comiterio Eccl'iz Cathedralis S. Pauli Lond' prædicabit, animam meam pre-cibus populi ibid' congregat' recommendare, pro qua recommendatione (& ut pro anima mea deprecet) volo qd'iple pradicator habeat xl d. Item volo qd' tres prædicatores qui in cemit' novi Hospitalis beatæ Mariæ extra Bishopsgate Lond. tribus diebus in septimana Pasc. prox. post obitum meum pradicabunt, animam meam piis precibus populi ibid' congregat' special' recommendant, & habeant quilibet ipsor' trium prædicat' pro hujusmodi animæ meæ recommendat'. & ut ipsi pro anima mea exorent, xl d. Et volo quod Execut' mei durante uno anno integro prox. post decessum meum omni die dominica faciant prædicat', ad crucem in comiterio Eccl'iz Cathedralis S. Pauli suprad' prædicantes, animam meam precibus populi ibid' congregat' special' recommendare, pro qua quid' recommendat' habeat hujusmodi prædicat' iv d. Item lego domino Rob. Forset Capellano meo de Lond' x li. ut ipse dn's Rob. pro anima mea special' celebret & deprec' per 8 annos prox. post decess. meum sequen's capiend' sf. annuat' pro suo salario C. s. si tam diu vixerit: Et fi inf. diet' term' 8. annor' obierit, quod tunc diet' Ro. resid' qd' ind' remans, pro anima mea & anima ips. dn'i R. in piis usubus distribuat, & distribui fac'. Item lego Mar. forori mez C. s. & unum ciphum argent' cum cooperculo eid pert'. Item lego Isab. sorori mez C. s. & unum ciphum arg. cum cooperc' eid' pert', ut ips. M. & J. pro anima mea exorent: & ad istud testam' meum meam ultimam continens volunt' bene & fidel' exequend' & perimplend', ac inviolab' perficiend' ordino & constit' meos exec' J. Bart' frat' meum, & Al. Sprot civem & pannar Lond, ac die dn'm R. Forf. Cappell' meum, & eor' supervis. præsent testamenti mei ordino & constituo Johannem Wakering Magistrum hospitalis Sancti Barton supradicti: Quibus vero Exec' & supervis. super' nominat', lego resid' omnium & singulor' bonor meor' & cattal' quod remans' per me minime distribut', disposit', nec legat' in mea ult' volunt', sidel' & indil' distrib', pro anima mea, vol' q' ipsi execut' & supervis, juxta eorum san' discrett. 0 4

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discretionem & conscientiam, de bonis meis pro suo labore rationabiliter percipiant. Et 'qd' prasens testament' meum & mea ultima voluntas præscript', adeo festinanter quo commode fieri poterit per ipsos perimpleat' & exequetur, prout in die metuenda ultimi judicii, pro me & seipsis coram summo sudice in nihil ignoratur voluerint respondere. In cuf rei testimonium huic præsenti testamento meo indentato ultimam meam continenti volunt' figillum meum appofui: Dat' die & anno fuprad'. Et dicunt ulterius juratores præd' super sacr'ın suum præd', qd' præd' W. Brampton de die mel. & sex acris pasturæ parcell' &c. inter alia sic ut (præfert') seisit' existen', præd' J. Barton senior postea ap' Buck. præd' obiit. Post cujus quidem J. Barton senioris mortem, præd' W. Brampton fuit seisit' de mes. prædist' & sex acris pasturæ præd' parcell' &c. in dominico suo ut de feodo, ad seperales usus & intentiones in præd' ultima volunt' præf. J. Barton testatoris superius express. Quodque præd' J. Barton junior post mortem præd' J. Barton testatoris in præd' mess. & fex acras pasturæ cum pertinentiis parcell' &c. intravit, ac reddit' & proficua inde annuatim post mortem præd' J. Barton testatoris provenien', pro & durante vita ipsius Joh. junior' percepit & habuit, ac eadem ad usus, intentiones, & appunctuac. in eisdem testament' & ultim' voluntat' inde limitat' & appunctuat. durante vita ejusdem Joh. junioris convertebat, applicavit, & persolvit: Et postea & ante pd' tempus quo &c. idem Jo. Barton junior apud Buck. præd' obiit, post cujus quidem J. Barton junioris mortem, præd' Will. Brampton fuit seisit' de dicto mess. & sex acris pafluræ præd' parcell' &c. cum pertinen' in dominico suo ut de feodo, ad usus & intentiones in præd' ultima voluntat' præd' Jo. Barton testatoris superius express. perimplend'; Quodque præd' Margareta & Isabella post mortem præd' J. Barton Junioris in præd' mess. & sex acras pasturæ parcell' &c. cum pertinentiis intraverunt, ac reddit' & proficua inde annuarim post mortem præd' Joh. Barton junioris proven', pro & durant' vitis ipsarum Margaretz & Habella, & earum alterius diutius viven' perceperunt & habuerunt, ac eadem ad usus, intentiones, & appunctuationes in eisd' testament & ultima voluntate præd' Joh. Barton testatoris declarat, limitat', & appunctuat. durant' vitis earund' Margaretz & Isabellæ applicaverunt, converterunt, & persolverunt, ac earum altera diutius viven' & applicavit, convertit, & perfolvit: Ac postea & ante præd' tempus quo &c. præd' Margareta & Habella apud Buck. præd' obierunt, post quarum quidem Margaretæ & Habellæ mortem, prædiæ' Will. Brampton fuit seisit in dominico suo ut de seodo, de & in die mess. & sex acris pasturæ præd' parcell' &c. cum pert' ad usus & intentiones in præd' ultima voluntate præd' Joh. Barton fenioris.

fenioris Testatoris express. perimplend': Quodque prædia' Will Fowler in testamen' præd' nominatus, habuit exitum de corpore suo legitime procreat' quendam Ri. Fowler, ac dem Will. Fow. post mortem prædictar' Margaretæ & Isabella in præd' mess. & sex acras pastur' parcell' &c. cum pert' intravit, ac reddit' & proficua inde annuatim post mortem orad' Mar. & Isabella provenien', pro & duran' vita ipfius W. Fow. percepit & habuit, ac eadem ad usus intentiones à appunctuaciones in eisdem testament' & ultima voluntat' ored' Joh. Barton fenioris testator' express. duran' vita ipsius W. Fow, applicavit convertebat & persolvebat; Et postea fexto die Julii ann' regni regis Henr', fexti tricesimo, W. Fow. apud Buck. præd' obiit, post cujus quidem W. Fow. mortem præfat' W. Brampton fuit seisitus de & in dieto meffuag' & fex acris pastur' præd' parcel' &c. cum pertin' in m'ico suo ut de seodo, ad usus & intentiones in præd' ultima voluntat' præd' J. Barton senioris superius express. perimplend'; Quodque præd' Ri. Fow. habuit exitum de corpore suo legitime procreat quendam Ed. Fow. ac idem Ri. Fow. post mortem præd' W. Fow. in præd' mesuag' & sex acris pastur' parcell' &c. cum pertin' intravit, ac reddit' & prosicua inde annuatim post mortem præd' W. Fow. provenien', pro & durante vita ipsius Ri. Fow. percepit & labuit, ac eadem ad usus intentiones & apunctuationes in eisdem Testament' & ultima voluntat' præfat' J. Bar. senioris testatoris express, duran' vita ipsius Ri. Fow. applimit convertebat & persolvebat, scilicet usque tertium diem Novembris anno regni regis Ed. quarti post Conquest' Anliz septim', quo quidem tertio die Novembr' præd' Ri. sow. apud Buck. præd' obiit, post cujus quidem Ri. mortem przd' Will. Bramp. fuit de messuag' & sex acris pastur' præd' parcell' &c. cum pertinen' seisit' in dn'ico suo ut de feodo d usus & intentiones in testament' præfat' J. Barton testatoris limitat' & declarat' perimplend': Quodque præd' Ed. Fow, habuit exitum de corpore suo legit' procreat' quendam labriel Fow. ac idem Ed. post mortem præd' Ri. Fow. in pred mell. & fex acras pastur' parcell' &c. cum pertin' inmvit, ac reddit' & proficua inde annuatim post mortem prad Ri. Fow. provenien', pro & durante vita ipsius Ed. pracepit & habuit, ac eadem ad usus intentiones & appunmat' in eisdem testament' & ultima voluntate declarat' & limitat', usque in quartum diem Februar' an. regni Regis d. 8. vicesimo septim' applicuit convertebat & persolvebat: Quo quidem 4 die Feb' virtute cujusd' actus in Parl. ap. West' n com' Mid' pro usubus in poss. transfer' adtunc tent' edit', red Ed. Fow. fuit seisit'de & in præd' mess. & 6 acris palur parcell' &c. cum pertin' dn'ico suo ut de feodo taliato;

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Et sic inde leifit existens exitus & proficua inde tota vite fua percepit & habuit, ac eadem ad usus & intentiones in testamenti prad' Jo. Barton senioris testatoris superius expreff. applicavit, & expendidit; Quodque præd' Ed. fic ind feifitus existens postea scz. xxviii die Maji anno regni prad nuper regis H. 8. tricesim' secund', apud Buck, præd' de tali Statu suo obiit inde sic seisitus, post cujus quidem Edwardi Fowler mortem præd' mess. & sex acræ pastur' parcell' &c. discendebant præf. Gabrieli Fowler, ut filio & hæred' de corpore præf. Edw. Fowler legitime procreat', virtute cujus præf. Ga. in præd' meffuag' & fex acras paftur' parcell'&c. cum pertinent' intravit, & fuit inde seisit' in dn'ico suo ut de feod' talliato, viz. sibi & hæred' de corpore suo legitime procreat', reversione feodi simplicis inde hared, diffi Jo. Barton teftatoris spectan', ad usus in dicta ultima volunt præf. Jo. Barton testatoris express. performand': Et præf. Gab. Fow, exitus & proficua inde ad usus & intentiones in cod testament' præd' Jo. Barton testatoris performari limitat' recepit expoluit & expendidit, a tempore mortis præf. Edw. Fow, infra quinque annos prox, ante ann' primum regniregis Edwardi sexti scz. usque quartum diem Maii anno regni nuper regis Henrici octavi tricesimo sept': Quorum przmillorum prædictorum prætextu, ac vigore cujusdam actus in parliamento ipsius domini Edw. nuper regis Angliz senti apud Westmonasterium in com. Middl' quarto die Novembris dieto anno regni sui primo inchoat', & ab inde con-tinuat' usque xxiv diem Novembris extunc prox. sequen' & adtunc & ibidem tent', concernen' Collegia liberas Ca-pellas, Cantarias fraternitat' gild' & alias spiritual' promo-tiones edit' & proviss. præd' nuper rex Edw. sextus immediate post festum Paschæ prox. sequen' post editionem actu præd' fuit seisit' de & in præd' mesuag. & præd' sex acm pastur' parcell' &c. cum pertin' (int' alia) in eodem testament' ut præfert' dat' & appunct' in dominico suo ut de feod in jure coron' suz Angliz, si lex Angl' sic in hoc casu postulat & requirit, posteaque idem nuper rex obiit de prad mell. & fex acr' pastur' sic seisit', si lex Angl' hoc postulat fine hered' de corpore suo exeunt'; Post cujus mort mel præd' & præd' sex acr' pastur' parcell' &c. cum pertin' inter alia descendebant dn'æ Mar' nuper reg. Angliæ, ut soroni hær' præd' nuper regis Ed. 6. si sic lex Angl' in hoc cal postulat, per quod eadem nuper reg. Mar' fuit feisit de me præd' & de præd' fex acr' pastur' parcell' &c. cum pertininter alia in dn'ico suo ut de feod in jure coron' sue Angl li lex Angliæ hoc postulat & requirit, & eadem nuper 16 gina Maria postea & ante prædict tempus quo &c. obit ic inde feifit, fi lex Angliz fic in hoc cafu postulat, fin hærede de corpore suo exeunt', post cujus mortem mesuzg prædict

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die & pred' 6 acr' paftur parcell' &c. cum pertin' inter lia descendebant diet dominæ reg' nunc, ut sorori & her pred' nuper reg. Mar', si lex Ang. sic in hoc casu postulat, er of eadem domina regina nunc fuit de præd' mess. d' 6 acris pastur' parcell' &c. cum pertin' inter alia feii'in d'nico suo ut de feod' in jure coron' sua Ang. si lex Ang. fe inde postulat & requirit. Et jurat' præd' ulter' dic' super feram' fuum præd', quod post præd' actum Parliamenti præd' inno regni præd' nuper regis E. 6. prim. edit', præd' Gabriel' Fowler occupat' præd' mess. & 6 acr' pastur' cum pertin' parcel' ar continuavit, & fuit inde seisit' in dominico suo ut de feod. alliato, fi lex Ang. fic in hoc postulat & requirit, habens exit de corpor suo legitime procreat quendam Ri. Fowler, & fic inde seisse' continuavit occupat' præd' si lex Ang. postulat & requirit; Et postea & ante præd' tempus quo &c. ss. 1 die de ali statu suo obiit inde seisit', si lex Ang. postulat & requint: Prætextu cujus, mefuag' præd' & fex acr' paftur prædiet' um pertin' parcell' &c. descendebant, fi lex postulat, præf. Ri Fowler ut filio & hæred' ipsius Gab. Prætextu cujus idem Rich. Fowler, postea & antea præd' tempus quo &c. in mess. texacr' pastur' præd' cum pertin' parcell' &c. intravit, &c. fut inde seisitus in dominico suo ut de feodo talliato, viz. shi & hæred' de corpore suo legitime procreat', si lex Ang. los postulat & requirit. Ipsoq; Ric. Fowler de mesuag' & sex er pasture præd' cum pertin' parcell' &c. sic feisit' existen', alex Ang. hoc postulat, idem Rich. postea & antea prædict tempus quo &c. fcil. decimo nono die Marcii anno regni die dom'Reg. nunc 33 apud Buck. præd' per quoddam scriptum um geren' dat' eisdem die & anno, sigillo præd' Rich. sigilh' & jurat' præd' in evidenc' oftenf. pro quadam pecunia mm'in eod fcripto specific', si per legem Angl. hoc poruit, lofavit quosdam Franciscum Dayrell & Edw. Dayrell gener, de mest & 6 acris pastur' prædict' cum pertin' parcel' &c. mer alia: Habend' eifd' Fran. & Edw. hæred' & affign' fuis imperpetuum, virtute cujus iidem Fran. & Ed. in mesuag. & feracr pastur præd' parcel' &c. intrav' & suer' inde seisit in nico fuo ut de feodo fi lex Ang. hoc postul' & sic inde seisit'exen, fi lex Ang, hoc postulat, fidem Franciscus & Edw. poa & ante prædict' tempus quo &c. scil. 18 die Junii anno gni dicta domina Regina nunc tricesimo tertio supradicto. ud Buck. præd', si per legem Angliæ hoc potuissent, seof-werunt prædict' Johannem Lambert de præd' mesuag' & acr' pastur' parcell' &c. cum pertin': Habend' & tenend' idem Johann' Lambert hæred' & affign' fuis imperpetuum retextu cujus idem Johannes Lambert postea & antea prædie? tempus

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tempus quo &c. scil. eodem decimo octavo die Junii anno tricesimo tertio supradiet, in mess. & sex acr' pastur' præd' par-cell' &c. cum pertinen' intravit, & fuit & adhuc est inde seisst in dominico suo ut de feodo, si lex inde postulat. Et jur' præd' ulterius dicunt super sacramentum suum præd' qd' præn dom' Reg. nune sieut præfertur seisit' in dominico suo ut de feodo in jurz coronz suz Ang', de & in przd' mess. & sex acr' pastur' parcel' &c. si lex Angl' hoc postulat, postea & ante przdid' tempus quo &c. scil. vicesimo septimo die Maii anno regni fui tricesimo quarto eadem domina Reg' nunc per literas suas patent' magno sigillo suo Ang' sigillat' jurator' præd' in evidenc' ostens. quarum dat' est apud Westm' eisdem die & anno. in consideratione boni veri fidelis & acceptabilis servicii eid dom' Reg' nunc antetune tempor' per prædilectum confanguineum fuum Thomam Comitem Ormond' & Oforia fact'& impenf. quam pro diversis aliis causis & considerationib' praf. dom' Reg' nunc adtunc specialit' moven', necnon ad humilem peririon' ipsius Comit', de gratia sua speciali ac excerta scientia & mero motu suis, dedit & concessit pro se hær' & succeff. fuis dilect' fubit' fuis Ed. Downing & Rog. Rant, gener' meff. prædict' & præd' fex acr' pastur' cum pertinen' in quo &c. inter alia per nomen totius illius nuper Cantar' fuz voc' Barton's Chantery, scituat' & existen'in Paroch' S. Petri in villa Buck' cum suis juribus membris & pertinen' universis in com' Buck. ac omnes terr' tenemen' reddit' & hæredit' sua quacunq; cum eor' pertin' univers. scituat' jacent' & existen' in diet villa Buck' & in præd' com' Buck. diet nuper Cantar' voc' Barton's Chantery, spectan' vel pert', five ad sustentationem capellani five presbit', & al' usus superstic' in Ecclefia S. Petri præd' juxta ordination' Joh' Barton sen' antetunt dat' legat' limitat' vel appunctuat' existen': Habend' tenend' & gaudend' eifd' Edm. Downing & Ro. Rant hær' & affig' fuis ad folum & propr' op' & ufum ipfor' Ed. & Rog. hær' & affig' fuor' imperpet'; reddend' & folvend' præf. dom' Reg. nunc hær' & success. suis annuat' imperpet', de & pro præd'nuper Cant' voc' Bartons Chantery, & cæter' præmiss. eid' sped' cum pertin' 131. & 20 d. legalis moneta Anglia, ad manus receptor' general' com' præd' pro tempore existen' seu ad recep-tum scaccarii diet' dom' Reg' hæred' & success, suor' ad seste S. Mich' Archangel', & Annunc' beatæ Mariæ virgin', per æquales porciones fingulis annis folvend', pro omnibus reddir exactionib' fervic' & demand' quibuscunq; proinde dict' dom' Reg' & fuccess. suis quoquo modo reddend', folvend', vel taciend'. Et præf. dom' Reg' nunc per diet' literas suas paten' pro se hær' & success. suis concess. præf. F. Downing & K. Rant qd' diet' lit' fuz paten' vel irrotulam' corund' effet valid

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valid' firma firmz fufficien'& effectual' in lege erga eand' dom' Reginam nunc, hæred' & fuccess. suos, tam in omnibus cur' quam alibi infra regnum fuum Angl' absq; aliquib' confirmationib' licenc' vel toller' de præf. dom' Reg. nunc hæred' vel success. suis. imposter' per præf. Edm. & Rog. hæred' vel assign' suos, aut corum aliquem vel aliquos procurand' vel obtinend': Non obstant' male nominand', vel male recitand', aut non reciand', præd' seperal' maner' rector', mess. terr', tenemen', ac cetera omn' & sing' præmiss. aut aliq' inde parcell': Aut non obstant' non inveniend' offic' & inquisition' præmiss. aut alicujus inde parcel', per quæ titulus dom' Reg' nunc inveneri debuit ante confection' literar' paten' præd': Et non obstant' non recitand', vel male recitand' alicui' dimiss. vel concess. de præmissis, aut de aliq' inde parcel' ante tunc fact' existen' de recordo, vel non de record': Et non obstant' aliquib' aliis defect' de certitudine computat' aut declaration' annui valor' pramiss. vel non declaratione annui val' pramiss. vel alicui' inde parcel' aut annual' redd' reservat' de & super præmiss, aut alic' inde parcel', in dictis liter' patentes express. & content': Et non obstant' aliis defect' de non nominand' aut in male nominand', aliquem tenen', firmar', five occupat' terr' tenem' chareditament præd', sive aliquor alior præmiss. aut alicui inde parcel', aut nominand', aut non recte nominand' aliquam villam, hamlett', paroch', aut com', in quib' præmiss. aut alig' parcel' existunt seu existit: Ac in non nominand' præmiss. sive aliquam inde parcel' in natura, genere, specie, sive qualitate: quirum quid' literar' paten' prætext' præf. Edm. Downing & Rog. Rant fuerunt de præd' mess. ac prædict sex acr' pasturæ parcell' &c. cum pertinen' inter alia seisit' in dominico suo nt de feodo, si lex Angliæ sic in hoc casu postulat' & requirit: Etsic inde seisite existen' si lex Angliz hoc postulat, & przd' Lamb' continuand' poss. suam præd' inde, &sic ut præfertur nde seiste existen', si lex Angliæ hoc postular, iidem Edm. Downing & Rog. Rant per quandam indent' fact' 28 die Julii anno regni dict' dom' Reg' nunc 34 suprad', inter præf. Downing & R. Rantex una parte, & quend' R. Snelling de Easthorstey in com' Surr' gen' & T. Butler de Grays Inn in om' Midd'gen' ex altera parte, pro quad' pecuniæ fumm' bonz & legalis monetæ Angliæ eis præ manib' per præf. R. Sneling & T. Butler bene & fideliter folut, tradiderunt, concesferunt, vendiderunt, barganizaverunt, & confirmaverunt prof. R. Snelling & T. Butler hæred' & assign' suis imperpetuum, ressuag' prædict' ac præd' sex acr' pastur' parcell' &c. cum perin int' alia: Habend' & tenend' præf. R. Snelling & T. Butler ared' & affign' fuis imperpet', prout per indent' præd' irrotuindorf, clauf. Cancellariz domina Region nunc ic die Decembris

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Decembris anno regni ejust' dom' Reg. nune 35. Jur' prad' similirer in evidenc' oftens. inter alia plenius liquet & apparet ; cujus quidem indentur ac irrotulament ejufdem pratextu, przf. Rob. Snelling & Tho. Butler fuerunt de prædie mell. & de præd' fex acris pasturz parcell'&c. cum pertin' in quibus &c. inter alia feisit in dominico suo ut de feodo, si lex Angliz sic in hoc casu postulat & requirit: Et præf. Rob. Snelling & Tho. Butler sic inde seisiti existen', fi lex Angliz hoc postular, postea & ante præd' tempus quo &c. ff. præd' 22 die Maii anno regni dict' dom' Reg' nunc 36 supradicto. in præd' mest. & præd' sex acras pasturæ cum pertin' parcell' &c. intraver' & fuerunt inde seisit' in dominico suo ut de feo. do, fi lex postulat; Et sic inde seisit', & prædict' J. Lambert continuand' possess' fuam præd', si lex Ang' hoc postulat, iidem R. Snelling & T. Butler præd' 23 die Maii apud diet' vill' Buck. demiserunt & ad firmam tradiderunt mess, præd' ac præd' sex acris pasturæ parcell' &c. cum pertin' (inter alia) præf. Tho. Adams: Habend' eidem Tho. Adams executoribus & affig. nat' suis, a prædict' 23 die Maii anno regni dictæ dom'Reg' nunc 36 supradicto usq; finem & termin præd decemannor plenar' complend' & finiend'; virtute cujus idem T. Adams in mess. præd' & in præd' sex acr' pastur' parcell' &c. cum pertin' (inter alia) postea st. 16 die Aprilis anno regni prædie! dom' Reg' nunc 39 intravit & fuit inde possessionat, si lex in hoc casu postulat; super cujus quidem Theoph' possession' inde præf. J. Lambert postea ss. eodem 16 die Aprilis anno 39 suprad' in mess. præd' & in præd' sex acr' pastur' parcell' &c. cum pertinentiis intravit, eundem Theophilum Adamsa firm' sua prædict' inde termino suo prædict' inde nondum finit' ejecit, expulit, & amovit, ipsumq; Theophilum a possessione sua inde extratenuit, & adhuc extratenet, prout prad' Theophilus superius versus eum narravit: Sed utrum Super tot' mater' præd' in form' præd' compert', videbit' curis hic qd' præd. Joh. Lambert est culpabilis de transgress. & ejest pred' Theo. Adams, de & in mess. præd' & præd' sex acr'paflurz parcell' &c. cum pertin', necne jurat' przd' penitus ignorant, & inde petunt avisament' cur' hic &c. Et si super tot mater'ill' in form' præd' compert', videbit' our' hic qd' præd' Lambert est culpab' de ejectione & transgress. præd' The de mell pred' & præd' fex acr' paftur' parcell' &c. cum per tin's tenc iidem jurat' dic' fuper facrm' faum præd', qd præd I. Lambert est culpabilis de transgress. & ejectione inde, proul præd' Theophilus superius versus eum inde queritur, & tune affidunt dampna ipsius Theophil' occasione transgress. & eject' illar', ultra miss. & custag. fua per ipsum circa sect' suam

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in hac parte apposit' ad 12 d. & pro mis. & custag. ill' ad 12d. Et si super tot' mater' præd' in form' præd' compert' vi-debitur cur' hic qd' præd' J. Lamb. non est culpabilis de eject'. transgress. præd', de & in præd' mesuag' & præd' 6 acris pabire parcell' &c. cum pertin', tunc iidem juratores dicunt fu-per sacramentum suum præd', qd' præd' J. Lamb. non est inculpabilis, prout idem Joh. pro se superius placitando allepvit: Et ulterius juratores prædict' dicunt super sacramentum fuum qd' prædict' Joh. Lambert in nullo eft culpailis de transgression' & ejection' prædict' in 4 acr' pastur' de redict' 10 acr' pasturæ resid' superius fieri supposit', prout red' Joh. Lambert superius inde placitando allegavit &c. te quia cur' diet' dom' Reg' hic de judicio suo de & super gramiss. reddendo nondum advisatur, dies inde dat' est partiis præd' coram eadem dom' Regina apud Westm. usq; diem Veneris prox' post crastin' Sanctæ Trin' de Judicio suo de & super audiendo, eo qd' cur' diet' dom' Reg. hic inde nondum kc. Et sic de Termino in Terminum, usq; diem Martis prox' post crastin' Animarum de judicio suo de & super præmiss. udiendo, eo qd' cur' diet' dom' Reg' hie inde nond' &c. Ad dem diem cor' ead' dom' Reg' apud West, ven' partes præd' in propriis personis suis: Super quo visis, & per cur' dicta don' Reg. hic plenius intellectis omnibus & fingulis præmiff. muraque deliberatione inde habit', pro eo qd' videt' cur' dell' dom' Reg. hic', qd' prædiet' J. Lamb. est culpabilis de mansgress. & ejectione præd' T. Adams de & in mesuag. præd'. aprad' 6 acr' pastur' parcell' &c. cum pertin'; Ideo consider'. al qd' præd' T. Adams recuperet versus præf. J. Lamb. tersinum suum præd' adhuc ventur' de & in præd' mesuag. & and' 6 acr' pastur' præd' 10 acr' pastur' parcell' cum pertin', t dampna sua præd' per jur' præd' in form' præd' assess. necon viginti & quinq; lib. pro mis. & custag. præd', eid' Th. Alams per cur' dom' Reg. hic ex assensu suo de incremento udicat'; quæ quidem dampna in toto se attingunt ad viint' quing; lib' & duos fol. Et præd' J. Lamb. capiat' &c. t fimiliter prædict' T. Adams in m'ia pro falso clamore suo telus præf. J. Lamb. pro resid' transg' & ejection' præd', unde dem J. Lamb. superius acquietat' existit: Ideo idem J. Lamat quoad resid' transg. & ejectionis ill', eat inde fine die &c.

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## Mich. 44 & 45 ELIZABETHE. In the King's Bench.

### ADAMS & LAMBERT's Cafe.

Hern. 198. Mo.648,649,650, &c. 1 Kollskep. 49, 50.

Lit. Rep. 111.

N Ejectione firme in the King's Bench, between Adams and Lambert, which began - of Lands in Buckingham within the County of Bucks, upon Not guilty pleaded, the Jurors gave a special Verdict to this Effect; John Barton was feised of the said Lands in Fee, and made a Feofsment in Fee to perform his Will, and afterwards by his Will in writing devised the faid Lands to John Barton his younger Brother for his Life, sub conditionibus sequentibus, viz. Quod idem Johannes durante vita sua, inveniat unum Capellanum pro anima dicti Joh. Barton senioris, & alierum in Ecclefia Sancti Petri in vill' de Buck' quotidie celebratur': Et voluit qd' prad Job. frater suus annuatim durante vita sua persolvat dicto Capellano in pred' Ecclesia pro Sustentat' sua 61. 13 s. 4d. de exitibus & proven' tenementor' prad'. Et insuper voluit qd' dict' Joh' frater Juns durante vita sua inveniat in vill' prad' 6 pauperes homines seve fæmin' ad orand' pro anima sua & alior' in testamento pras nominat' fingulis diebus imperpetuum : Et quod daret qualibet settimana durante vita sua cuilibet ipsorum pauper' 4 d. & elia cuilibet ip sorum manfion' prout (Deo disponente) pro eis confitu & ordinavit: Ac etiam qd' idem Joh' frater suus tota vua su inveniat unum lampad' ardent' singulis diebus & noctibus coran Sancto Romwaldo in Ecclefia prad', prout modo inventus eff o Sustentatus; & qd' idem Joh' frater suus durante vita sua tenest seu teneri faciat Anniversarium suum in Ecclesia prad', in que quidem Anniversario invenist idem Joh' frater suus annuatin duos cereos nocte ad Dirige, & die sequente ad Miss. unum se licet ad caput, & alterum ad pedes sepultura diel' testat and dentes, quolibet cerco ponderant' tres lib' quibus exequiis complet

voluit qd' totum id qd' de dictis cereis resid' fuerit, dimitat' & reman' altari S. Jacobi in Ecclefia prad' super candelabrum ibid' existen' Capellano cantar' sua pred' singulis diebus festivis ad Miss. quamdin durare poterit deservitur: Et quod idem Job' frater suus tota vita sua durante, inventat annuat' unum torcher' competen' ad altare prad' deservitur': Et voluit qd' omnia prad' tenement' post mortem prad' Joh' fratris sui integre remanerent Marg' & Isab' sororibus suis, ad vitam earum & earum alterius diutius viven'; sub conditione quod eadem M. & I. carum vita durant', faciant perimpleri & observari omnia onera superius limitat' in forma prad'. Et post mortem prad' Marg' & Isab' voluit qd' omnia prad' tenement' remaneant Will. Fowler tenend' fibi o bared de corpore suo legitime procreat; sub conditione qd iphobservent omnia & fingula onera suprascript' in forma antedict' imperpet', Et si contingat prad' Will. Fowler fine hared' de corpore suo legitime procreat' obire, tunc om' O' sing' prad' tenem' integre reman' Joh' Somerton consanguineo suo & hæred' de corp' suo legitime exeun', sub conditione qd' ipsi omnia & singula onera suprascript' in forma prad' perimpleant & observent imperpet': Et sitpsum Cr. Jac. 576. Joh Somerton absq; hæred de corpore suo legitim excun obire contigerit, qd' extunc omnia prad' tenementa integre reman' Will' Pufrey & hared Juis de corpore suo legit exeun', sub condic qu' idem Will' & hæred' fui, faciant perimpleant & observent omnia & singula onera in forma prad' imperpet': Remanere pro defect' bujusmodi exit' Magistro domus S. Tho. Martyris de Acon' Lond' pro 40 ann' extunc prox' sequen' & plenar' complend': Et post term' ill' finit' reman' Magistro hospital' S. Barth. Lond' & success. us pro 40 ann' extunc prox' sequen' & plenar' complend': Cuilibet eorum sub condic, quod quilibet eorum Magistr' & success. swrum durante eor' term', faciant & perimpleant omnia & singula onera supra limitat' in forma supradict': Et si contingat præd' Job fratrem Juum durante vita sua in perficiend' onera supradict' Usicere, seu ill' non perimplere, aut omnia prædicta tenementa dutante vita sua non competent' sustentare & reparare, seu ea aut aliquam parcel earund' alienare five ad parvum valor' ea dimitwe in prajudic' cater' personarum in remaner' supradict' nominat; quod extunc bene licebit praf. Marg' & Isab' in prad' tencmenta cum pertin' intrare, & ea retinere ut in reman' suo prad' bsq; contradict' alicujus, & qd' extunc status prad' Joh' fratris Juomnino cessat, & nullius sit valoris: And the like Condition or Limitation of Forfeiture is annexed to all the Remainers in the same Will, and if all in Remainder forfeit, the aid Lands to remain to the faid John Barton the Testaor, and to his Heirs for ever. Supportandum, Oc. Et quia u mea voluntas pro bono animarum patris & matris meorum, nima etiam mea animabusq; fratrum, soror, parentum & enefactorum meorum edita fuit, & ordinata: Precor & hero prad' fratrem meum, prout pro me O se voluerit respondere, grod

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quod ipfe tota vita sua diligenter supervideat gubernation' cantar supradict; & quod omnia sufrascripta & in hec mea ultima voluntate declarat' inviolabiliter perimpleant' & conservent': Et quod notitiam fac' omnib' his qui in reman' prad' flatum habe. bunt in dictis tenementis, ut it si cognoscant tenor' & effect' testamenti O' ultima mea voluntat'. El volo qd' feoffatz mei de tenement' cum Juis perlinen' qd' mei fauperes homines modo inhabitant pro co quod est divisibile, facient talem statum post mortem meam omnibus illis supranominat', prout babcant ex meo legato de & in tenementis in Buck' prad', ad usum prad' pauperum ibid' babitan' supportand' reparationes illius tenementi prad' pauter' quoties indegerit: Et quia dubito ne tenement' suprad' sufficiant ad supportand' omnia pred' onera, causa grandi custus reparation' eorundem, volo qu' feoffati mei flatim post mortem meam faciant talem statum omnibus illis supranominatis, de omnibus illis terris O tenementis meis in villis de Bourton, Moreton, Gavecot cum prebend' Lembergh, Thornborough, Hillesden, Waterstratford, Shaldeston & Foycote in com' Buck' ac de omnibus illis terris & tenementis meis in Worton in com Oxonia, ac de uno tenemento meo in villa Oxonia in quibus feoffati extiterunt, prout habent ex meo legato de & in tenementis de Buck. prad': Ita quod sufficienter omnia onera prad' possint sustentare, et etiam pro labore inde rationabiliter percipere & obtinere. And this Cafe was often argued at the Bar, and afterwards it was openly argued in Court by Telverion and Fenner Justices in one Day, and by Gawly and Popham Chief Justice in another. And in this Case (which extends to all the Parts in effect of the Body of the Statute of 1 E. 6. cap. 14.) these Points were resolvid. 1. Altho' in this Case the Land was devised to his Brother for Life, the Remainder to his Sisters, &c. between whom as was objected, was apparent Consideration of Nature, and every one by the Law of Nature is bound to provide for his Blood and Posterity in reasonable Manner; and altho' the Devifor has limited what Sums shall be employ'd upon the Chaplain, Obit, Oc. by which his Intent (as it was objected) appears to advance them of his Blood (to whom he had devised the Land) with the Residue of the Profits which remain'd, and whereof no certain Disposition was made by him, that by the Law the Land being devised to them they should take the Surplufage of the Profits (of which no Disposition was made) to their own Use, and the apparent Consideration of Advancement of his Blood expresses his Intent, that after the Divine Services (as it was then thought) were performa, those of his Blood should be maintain'd and reliev'd with the Residue, wherefore his Blood should have the Land, and the Chaplains, &c. should have Pensions, and so in Respect of the Persons the Land was not given to the King; yet it was refolv'd, That Wives, Sons, Daugh. Sifters, Coufins, and other

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dear Friends, were Persons within this Act; for if Men as well in their Lives, as by their Testaments after their Deaths, used to put and repose Confidence in their Kindred and dear Postes 116.2 Friends, for their temporal Goods, a multo fortiori, when they intend to dispose of their temporal Possessions for the Health of their Souls (as it was then thought) they would convey them to those in whom they had the greatest Confidence: And in these Cases of Divine Service concerning the Health of the Soul, it shall not be intended any Advancement or Preferment of his Blood, or any other earthly Confideration, unless it is so declar'd by express Words; but all shall be intended for the Advancement and Continuance of the Intents and Purposes express'd, J. Divine Services as Things without all Comparison most worthy and excellent; and he who betrays fuch Trust (the Divine Service being according to the Law of God) is by many Degrees a greater Offender than he who doth not perform Trust or Confidence concerning temporal Things, for he who robs his Friend commits Felony, and he who robs poor Men of their Living is a greater Thief by the Law of God, for Panis pauperum vita Co. Lir. 343. pauperum, & qui defraudit eos vir sanguinis est: But he who 8 Co. 171. a, b takes away any thing that is given for the Divine and true Service of God, eft Jacrilegus, & omnium pradonum cupiditatem & scelera superat: And altho' it appears by the Preamble of the Act that the devising and phantasing of vain Opinions of Purgatory and Masses satisfactory to be celebrated for those who were dead, was great Cause of Superstition and Error in Christian Religion, &c. yet for a smuch as the Devisor and Devisees in the Case at Bar were (as they were taught) perswaded that it was for Divine Service and the Health of Souls, it shall be intended that their Intentions were to advance fuch Uses, and not the private Advantages of the Devisees: and therefore it was resolv'd, that the Person, be he of Blood or not, lingle, or corporate, or politick, to whom the Land is devised or convey'd, is not to be respected, but all is one within the Purview of this Act. An this was resolv'd Duke gi as to the Persons of the Devisces, Feosfie's, &c. within this 2. Altho' it was objected, that forafmuch as the Land was devised for Life the Remainder in Tail, and Reversion of the Fee expectant to the Heirs of the Devisor was not devised, and the Letter of the Act is, to the finding of any Priest to have Continuance for ever, upon which it was faid, that an Estate for Life and an Estate Tail, which were Estates limited and determinable, were not within the Letter or Intention of this Act, O eo potius beause the Makers of the Act by the first Branch have provided, when a Priest was appointed to be found for ever, and by another Branch subsequent, when he was to be found for Years, by

Duke 91, 107. Lane sor.

by which special and precise Enumeration of these two Ca. fes, the Makers of the Act intended to exclude Estates in Tail, and Estates for Life, so that Estates in Tail and for Life funt casus omissias it was said: Yet it was resolv'd, that Estates in Tail and Estates for Life also were included by E. quity and Meaning within the former Branch, for the Intent and Meaning of the Act as appears by the Preamble, was to extirpate out of Mens Minds these superstitious Errors, and to take them utterly away, in what Manner, or for what Time they were given, and not to take them away only which were appointed to have Continuance for ever, and leave those to have Essence which were determinable or limited for a Time: And forafmuch as the Statute by express Words abrogates and takes away all fuch superstitious Uses which were to have Continuance for ever, by Equity and good Construction it extends to every less Time whatsoever, Also it was said, that the Statute says, by any Manner of As. furance, Conveyance, &c. for ever, and by common Possibili-ty an Estate Tail may continue for ever. Also in this Case at Bar the Intent of the Devisor was (as appears by his Will) that the Priest should be found for ever, for he appoints alfo his right Heirs to find him: And if fuch Construction should not be made, the Mischief intended to be remedied by the Act would remain against the Intent and Meaning of the Act: And in the Clauses of Obits, the Words are, To have Continuance for ever. And yet it was agreed in the Case of Winchester that an Obit being appointed to be found for 8 Years was included within the Equity of the Act: So it was Duke 92. 10 Co. resolv'd 22 Eliz. in the Dean of Paul's Case, That a College 83.b. 11Co.13.2. Dy. 368. pl. 47. 4 Leon. 156,157. Goldib. 93. or Chauntry in Reputation, altho' it wants sufficient Foundation and Incorporation in Law, was given to the King by Jenk. Cent. 245. the laid Act, and the Reason was, because the Intent of the Roll. Rep. 127. Makers of the Act was to take away all Superstition out of Poster 108. 2. Mens Minds, and not to suffer any to have Continuous and Mens Minds, and not to fuffer any to have Continuance; and Superstition was maintain'd as well in reputative Chauntries, as in others; and yet it was not within the Letter of the Act, for in Judgment of Law it was no College nor Chauntry; for Reputatio est vulgaris opinio ubi non est veritas. And this was refolv'd as to Estates devised to superstitious Uses within the Purview of this Statute. 3. Where it was objected, That this Devise of the Land was not to the Intent to find a Chauntry or Stipendary Priest, or to the finding of a Priest as the Statute speaks, but was upon Condition to find him, so that if the Priest shall not be found, the Estate shall cease, and the said third Branch of the Ad doth

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doth not speak of any Estate conditional, but only where the Priest was to be found for ever; and therefore an Estate conditional shall be out of the Purview of the Act: But it was answer'd and resolv'd, that it was within the said Act, for when the Land is devised upon Condition to find a Priest, without Question this Land is devised, To the finding of a Duke 91. 109. Priest, Oc. as the Statute speaks. And it is a stronger Case where it is devised upon Condition, than where it is devised. to the Intent, or for the finding of a Priest, for the Condition is more compulsory and penal for the Maintenance of Things prohibited by the Law. Nota Reader, there is one Proviso versus finem actus, by which it is provided, That it shall not be lawful for any Person by Reason of any Reversion, Use or Condition to enter, or claim any Land for not finding of any Priest, or poor Men, Obit, Anniversary, Light, or Lamp, after the said Act to be found or done. By which it appears, by the Judgment of the whole Parliament, that Land given upon Condition or other Determination and all Estates whereof there were Reversions expectant, be they Estates Tail, for Life, or any other particular Estate, were within the Act. And this was refolv'd for the Manner of Conveyance or Affurance of Lands to superstitious Uses within this Act. 4. It Duke 91, 1072 was refolv'd, that all the Land in this Case was given to the K. by the said Act, which was the principal Point of the Case, and of great Consequence, and that for divers Reasons; for the better Understanding of which, 5 of the first Branches of the Act are to be consider'd. 1. Are given to the King, All Manner of Colleges, free Chappels, and Chauntries, Ge. 2. All Manors, Lands, Tenements, Ge. belonging to them or any of them. 3. All Manors, Lands, Tenem' &c. by any mean Assurance, Conveyance, &c. given, assigned, limited or appointed to the finding 1 Co. 24- b. of any Priest to have Continuance for ever, and wherewith or whereby any Priest was sustained, maintained or found, within 5 Years, &c. 4. And also all annual Rents, Profits and Emoluments at any Time within five Years, &c. imployed, paid or beflowed toward or for the Maintenance or finding of any Supendary Priest for ever. 5. Shall be in the actual and real Possession of the King, Oe. in as large and ample Manner and Form, as the Priest, Wardens, Masters, Ministers, Governors, or other Incumbents of them within five Years, &c. had occupy'd or enjoy'd the same, and as the the Colleges, free Chappels, Chauntries, Stipends, Salaries of Priefts, and the faid Manors Lands, &c. were in this Act specially particularly, and certainly renearsed, named and express'd by express Words, &c. And the Consideration of every of these Clauses was requisite for

ADAMS & LAMBERT'S Cafe. PART IV. the deciding of this Point, for the true Exposition of one of

them serves very well for the good Understanding of the other's: As to the first Clause it was-resolv'd, that some of the Colleges, Chauntries, Oc. which were not lawfully founded, but were only in Reputation, were given to the King by the faid Act, and some not, and therefore this Difference was agreed, that where the College, Chauntry, &c. had fuch Beginning which might have made a lawful Foundation, but for Error or Impertection in the penning or proceeding of it, was not in Judgment of Law lawfully founded, such College or Chauntry is given to the King by the faid Act: But when there is a College or Chauntry only in vulgar (a) Reputation,

3 Inft. 668.

The Cafe of Greyftock Col-10/Ca. 34. b.

(a) 5 Co. 26, 2. Cawdry's Cafe,

Boll, 463.

(a) Cro. Jac. 51, there is a College or Chauntry only in vulgar (a) Reputation, Rep. 127. without any Commencement or Countenance of a lawful Lit. Rep. 131. Foundation, or erected by such Means which can't make a Foundation, or erected by fuch Means which can't make a lawful Foundation, there such College or Chauntry is not given to the King by this Act. Nota Reader, the Rule is, (6) Antes 106.b. Quod (b) reputatio eft vulgaris opinio ubi non eft veritas, & vulgaris opinio eff duplex ; J. Opinio vulgaris orta inter graves & diferetos, & que vultum veritatis habet ; & opinio tantum orta inter leves & vulgares homines absque specie veritatis: And ac-

cordingly to this Distinction it has been adjudg'd and resolved by all the Justices upon this first Branch of this Act: And therefore Hill. 6 & 7 E. 6. Dyer 81. which was immediately after the making of the faid Act, the Cafe was, That Pope Urban at the Request of Ralph Baron of Greystock founded a College of a Master and fix Priests resident at Greystock, (c) Dy. 81. pl. 64. and affign'd to each of the Priests 5 Marks per annum, be-Dyer 267. pl. 13. sides their Bed and Chamber, and the Master 40 l. per ann Scales 52. Lit. Rep. 108. and it was certified into the Book of First Fruits and Tenths Rector' & Colleg' de Greyff', and this College was in effe within 5 Years before the faid Act; and it was refolv'd by the Juffices, that this reputative College was not given to the King by the faid Act of 1 E.6. because it wanted a lawful Beginning, and the Countenance also of a lawful Commencement, for the

Realm, nor affign nor licence others to affign temporal Livings to it, but it ought to be done by the King himself, and by no other, Nomen non Sufficit, fi res non fit de jure aut de facto, and it is as much as if one of his own Head had erected and founded a Chauntry without Licence or Authority derived The Case of the from the King: But Mich. 9 6 10 Eliz. Dyer (e) 267. where

(d) Pope can't found or incorporate a College within this

College of Lan-the Case was, that King E. 1. anno 12 of his Reign, by his dwybrevic.

(c) Moor 650. Letters Patents under the Great Seal, granted to Tho. Beale to Co. 34 b. then Bishop of S. Davies and his Successors, the Advowson Dyer 267, pl. 123. of 34 Churches in Wales within his Diocess, to hold of the K. and his Successors, fo that the Bishop and his Successors might

appropriate them, or any of them to their Churches of S. Da-

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vies and Aberguelley, or make and annex Prebends of them in the said Churches of S. Davies and Aberguelley, as to them should seem most convenient; and three Years after, the Bishop by the King's Assent (as the Bishop in his Instrument affirm'd) of the Chapter of S. Davies, erected and establish'd a College, or Church Collegiate, & quidquid celebratus Collegii deposcit authoritate sua supplevit in Landwybrevy, being one of the 34 Churches, and ordain'd 13 Canons fecular there, f. 5 Priests, 4 Deacons, and 4 Subdeacons, and made them Prebends and Prebendaries, and annexed and appropriated 13 of the said Churches to them, &c. and reserv'd to the Bithop himself and his Successors as Dean, Locum in cho-19, O' vocem in Capitulo, and also Visitation and Corrections. Ge. In which the Bilhop did not purfue the Authority and Power given him by the faid Letters Patents, for by them no Power was given him to found fuch College; and afterward King E. 3. by his Letters Patents reciting the faid Foundation and Erection of the faid College, and all other the Premisses, with some Doubt of the Validity of it, by his faid Letters Patents granted and confirm'd to the then Bishop of S. Davies and his Successors, all that which his said Predecessor had done in the Premisses, the Statute of Mortmain, or any Statute notwithstanding; and notwithstanding the faid College, was erected or founded, and the Appropriations made without the King's Licence; which Grant and Confirmation being made to the Bishop and his Successors, could not make the faid College (which wanted lawful Erethion and Foundation) good in Law; and yet by these Pretences the faid College of (4) Landwybrevy continu'd 2 (4) Hob. 23 College in Reputation 'till I E. 6. And it was resolv'd by Antea 106. the Justices of both Benches, that this College was given to Dyer 386. pl. 45 for the Causes aforesaid were not of Effect, and the Statute Jenk. Cent. 245. faith, All and all Manner of Colleges, Oc. And such reputative College is within the faid Act, and Power is given to Commissioners by the said Act to establish a Vicar in every College which was a Church Parochial, and so upon this Difterence concerning Reputations, it was refolv'd in the Cafe of the Dean of Paul's, Pajoh. 22 Eliz. between Burton and Wilford, by Wray Chief Justice, Sir Thomas Gawdy & totam Curiam of King's Bench, which Case is for other Points thortly touch'd in 22 Eliz. Dyer 368. And fo in this Case at Bar it was resolv'd, altho' the Devisor calls it his Chauntry twice in his Will, as appears before; for he wills that the Devisee shall find two Tapers burning at his Anniversary, and that which remains the Chaplain of his faid Chauntry shall have: And afterwards he charges the Devisee to oversee the Government of his said Chaun-

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try, and that it was commonly call'd Barton Chauntry: yet because it had not any Commencement or Countenance of a Commencement of an Erection or Foundation of a Chauntry, these Lands were not given to the King by the first Branch of this Statute. Also altho' in the proper Words of the Law a Chauntry may confift of a Priest singing for Souls (whence he is call'd a Chauntry Priest) without any Incorporation, as appears by F. N. B. (a) 209. L. and the Register, That if a Man gives Lands to a Religious House or other, to find a Chaplain finging Divine Service, if he ceases for two Years, the Lord shall have Ceffavit pro Cantaria, and the Writ thall fay, Ad inveniendum quendam Canonicum pro animabus antecessorum, &c. divina celebrant'. So in the Statute of DF.N.B.309-L. W. (b) 2. c. 41. fuch finding of a Chauntry Priest is called a Chauntry, for there it is faid, Et fi forte tenementum fic datum pro Cantaria, Luminare, &c. and yet it is not any Corporation of a Chauntry: Altho' in 40 Aff. 26, where a Man devised Lands to H. C. and his Heirs, to find yearly 12 Marks to two Chaplains to pray for Souls, these are called Chauntry Lands by Knevet Chief Justice, 43 (c) Aff. 27. yet within this first Branch such Chauntry is only intended when the Chauntry is lawfully incorporated, or at least has the Countenance, or Beginning of a Corporation, and that for divers Reasons as after appears: And so it was resolv'd what Manner of Chauntries, Colleges, Oc. were given to the King by this Act, and what not. As to the second Clause, it was refolv'd: 1. That those Words were necessary to be added, for otherwise by the Gift of the College, Chauntry, or free Chapel, nothing would be given to the King, but the Scite of the College, or Chauntry, or free Chapel, as is agreed Branch explains, that they ought to be Incorporations in Law, or in Reputation as is aforesaid, or otherwise Land, &c. could not belong to them: And when Lands are devised to certain Persons (as in the Case at Bar) to find a Chaplain, the Land doth not belong to the Chaplain, but to the Devisees, and here the Chaplain has but a Pension, and the Devisees have the Lands. As to the third Branch, it was

> refolv'd, that as the first Branch extends only to Colleges and Chauntries, which are of some Manner of Incorporation

> or Foundation as is aforesaid; So this third Branch extends

to Cases, where Lands are given to find a Priest without any

Foundation or Incorporation: But it was objected, that in the

Cafeat Bar in Respect of the Certainty of the Sum appointed to the Priest that it was out of this third Branch, and within

(c) Moor 649.

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the 4 and 5 Branches; for the third Branch (as was obeffed) extends only when the Land is given limited or appointed to the finding of a Priest to have Continuance for ever: But in the Case at Bar nothing is limited or appointed to the Priest, but a certain Stipend of 6 l. 13 s. 4 d. pro suffentatione sua: And therefore it was said, If Lands of the Value of 20 l. per ann. are given to find a Priest, and that the Priest out of the Issues and Profits of the Land shall have 10 l. for his Sustentation, it was said this Case was out of this third Branch, and within the express letter of the fourth Branch, for here is the yearly Sum of 10 l. which is a yearly Profit within five Years imployed for the Maintenance and finding of a stipendiary Priest for ever; and in the Case at Bar he is but a stipendiary Priest because his Stipend was certain. But if Lands of the Value of 201, per ann. are given to find a Priest without any Limitation in certain, and the Feoffees imploy 10 l, in certain upon him, yet it was there agreed, that all the Land was given to the King, because the Gift was directly within the third Branch, and not within the fourth for the Incertainty. It was likewise objected, that the fifth Clause doth greatly enforce this Case, for thereby it appears, that all that which the Priest had, the King shall have; In as large and ample Manner and Form as the Priest at any Time within five Years, &c. had occupied and enjoyed the same: And in this Case the Priest within the five Years nor any time before had not by the Limitation aforesaid, nor could have above the Sum of 61. 13 s. 4 d. and to prove their Pretence the Case of the Dean of Paul's, 22 Eliz. fo. 368. was cited, where the Case was, That the Executors of A. B. accor- Antes 106. b. ding to the Will of their Testator, anno 6. E. 2. assigned 108. 2. 10 Co. and conveyed Lands and Tenements to the Value of 14 l. 13. 2. Dyer 368. per ann. to the Dean and Chapter of Paul's, to find a com-pl. 47. 4 Leon petent Sustentation yearly of 10 Marks Sterling, for a Priest Goldsb. 93. and his Clark to fing Mass every Day for the Testator's Soul lenk. Cent. 245.

and all Christian Souls in the Church of S. Paul. and the faid Dean and Chapter ought to find Bread, Wine, Candies, and all other Ornaments for Divine Service; and all the other Profits of the Premises by the Executors were asligned to be employed for the yearly Obit for the faid Tenator in the faid Church; The Priest was maintained within the five Years, and had 61. 13s. 4d. per ann' but the Obit was not kept within the 5 Years. And it was refolv'd on the Justices of both Benches, and the Barons of the Exchequer, that the Queen should not have more than the 61. 13 s. 4 d. and that for two Reasons. 1. Because the Land was not belonging to any Chauntry, but appertained to the Dean and Chapter of Paul's: Also the Words of the Statute are, That the King shall have the Land or Rent tam amplis modo & forma, as the Priest himself had,

(a) 1 Co. 24. 2. 26. 2. 10 Co. 24. 2. 34. 2. 2 Rol. 787, 788.

and the Priest had not the Land; and these in Effect are the Words of the Book. The fecond Objection was, that in this Cafe there was a good Use, f. (a) 4 d. by the Week to fix poor Men apiece, which is good and charitable; and altho' it be added, Ad orandum pro anima sua, O aliorum in testamento prad' nominat' in fingulis diebus, yet for as much as that is not prohibited by any Branch of the faid Act, it is but Surplufage, and is no Impediment to the good Use: For if it shall be prohibited by any Clause of the faid Act, it shall be by the Branch concerning Obits, 1. To the finding of any Anniversary, Obit, or other like Thing, Intent, or Purpose. And it may be faid, That this praying for Souls by these poor Men, is another like Intent and Purpofe; But the Conclusion of the Sentence is, In any Church or Chappel to have Continuance for ever: So that the Intent of the Act was to prohibit all superstitious Uses, which were publick in Churches for the general Prejudice which might accrue by them; for Malum quo communius co pejus, and not to prohibit private Prayers in their Chambers, or other private Places, which could not tend to fo dangerous an Example. Then the Case is no other but that Land of the Value of 20 l. per ann' is given to the intents following, s. to find a Priest to pray for Souls, and that he thall have 10% of the Profits of the Land, and 6 poor Men 4 d. apiece a Week for ever, in this Cafe, this good Use (as it was strongly urged) shall save the Land, and the King shall have but that which was limited to the Priest, f. 101. for it was not the Intent of the Act to take away the good Use, but the Land should remain with the Feoffees to perform it, and so much as was limited to the superstitions Use should be given to the King; and to prove this divers Cases were cited. First, a Case in the King's Bench, anno 21 Eliz. inter (b) Hewet & Wotton for Lands in Exeter, where the Cafe was, That Gervafe Luiffant enfeoffed divers of the faid Lands, and willed that they thould find a Priest to sing Mass in the Church of S. Mary every Sunday, and a Dirge & Mass de requiem once a Year for his Soul, and that they of the Issues and Profits of the faid Lands should pay to the said Priest 2 d. every Week, and the Residue of the Profits to be imployed upon Books, Vestiments, and other Ornaments of the Church aforesaid, and it was adjudged, that altho' the Land was given to find a Priest, yet for as much as his Stipend was certain, and also was joined with a good Use, that the Land was not given to the King by the faid Act, but only the Stipend which the Priest had. Another Case was adjudged in the same Court, Trin. 30 Eliz. but it began Pasche 28 Eliz. Rot. 431. in Trespass between John (c) Chibnal Pl. and W. Witton and Chr. Witton Defes, for an House in Fleetff, called, The Angel

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le Hoop; upon Not guilty pleaded, and upon a special Verdict found the Case was such; Bennet Harlewyn 36 H. 6. his Will in Writing deviced to the Master and Brethren the Guild of Drapers of London 3s. 4d. yearly, to be imloved for the Relief of the poor Brethren and Sifters of he same Guild, and devised the said House to the Parson and Churchwardens of S. Christopher's Parith and their Succeffors. Ad inde folvend' annualim prad reddit' 3 s. 4d. per ne superzus concess, & quod iph de exitibus inde solvant annuat qualibet septimana uni Capell' in Eccles. S. Christopheri Miflam celebrand imperpet pro anima mea 3 d. Et quod solvant nalibet septimana tribus pauperibus ejusdem parochia 6 d. ad wandum pro anima mea; Et quod celebrari faciant annuat' mon Anniversar' distribuend' 13 s. 4 d. in forma sequenti, viz. milibet Capell' interessenti illo anniversario 4 d. O quod 12 d. inde annuat' solvant custodibus operis Ecclesia ad usum fabrica corporis Ecclefia, & 12 d. ad suftentationem fraternitatis S. Christopheri, residuum 13 s. 4 d. expendatur in pane & polis inter Capell & alios pauperes eo die anniversarii ad exoranlum pro anima mea; Ac quod Gardiani habeant de exitibus inde 6 s. & 8 d. pro laboribus suis: Residuum de exitibus reservetur in pixide ad sustentation' O reparationem dictorum teamentorum & (cum opus fuerit) ad novam edificationem eorund'; And all these were imployed within the five Years. pofter 114. b. And it was adjudged in that Case the King should not have Cro. El. 799 the Land, and the Reason (as was faid) was because the Moor 30, 31. 31. 4 d. to the Poor of the Guild of Drapers, and also the bato the other 3 Poor of the Parish (altho) the 3 Poor were appointed to pray for Souls out of the Church, Ge.) were good Uses, and therefore the finding of a Priest gave not the Land to the King. But yet it was resolved and adjudged that this Case at Bar was within the said third Branch of the Act, and that the Land was given to the King by the aid Act. And for the better and more perspicuous Knowledge and Understanding of the Resolution of the Justices in this Case, I am oblig'd to avoid great Prolixity and Intricacy, to reduce all their Reasons and Causes of their Resolutions to these fix Differences, all which necessarily concern the Case at Bar, as well for the Confirmation of their Resolutions, as for the Confutation of all Objections, allo for the true Understanding of all the former Reolutions and Judgments, amongst all which by these Differences excellent and perfect Unity and Agreem. appear. The Diff. was, If a Man gives Lands of the yearly Value of 20 1. The. I Divertity others, to the Intent to find a Priest to pray for Souls, and Duke 107. Cre that the Priest shall have of the Issues and Profits of the Lands Car. 455, 456. 10% for his Salary, without any other Limitation, that in

Adams & Lambert's Cafe

that Case all the Land is given to the King; But if the Land is given upon Condition, or to the Intent that the Feoffees shall pay of the Issues and Profits of the Lands 10% to a Priest to pray for Souls without any other Limitation. that the King shall not have the Land, but only the Rent of to 1. out of the Land; And the Reason of this Difference is, because the first Case is within the third Branch of this Act, for the Land it felf was given to find a Priest, according to the Letter of the Act, and in as much as he was maintained with 10 l. of the Issues and Profits of the Land. it was within the Words subsequent of the said 3 Branch, s. Duke 107. 2 Rol. wherewith, or whereby any Priest was maintained. For by the Land and the Profits of it he was maintained, and no Use shall be intended but that which the Donor expresses, and the Maintenance or Augmentation of it, and for as much as the Land was given to find a Prieft, altho he limits in certain how much the Priest shall have for his Salary and Living, yet to the finding of a Priest to pray for Souls other Things are necessary which are imployed in such Gift, f. Garments, Books, Wine, Bread, &c. And the penning of these Branches concerning finding of Priests, differs much from the penning of the other Clauses concerning Obiss, for there the Words of the first Clause are, Given, assigned, or appointed, to go or be imployed wholly to the finding or Maintenance of any Anniversary, &c. And the 2 Clause is, And where but Part of the Issues or Revenues of any Manors, Lands, &c. But no such Distinction is expressed within the

> Branches concerning Priests, And the Reason of the second Part of the Difference, f. When the Feoffees are appointed

> to pay out of the Land a certain Sum to a Priest, &c. and

because the Land it self is not given upon Condition, or to the Intent to find a Priest; But the Feosses are limited

or appointed to pay to the Priest 10 1. and therefore the K.

can't have more than was given to the finding of the Prieff;

and that was 10 l. as the Priest's Stipend, and not the Land

which was not given for the Maintenance, or finding of the

Priest; and therefore the King shall have the 10 1. only by Force of the faid fourth Branch of this Act; for that is in Nature of a yearly Rent, Profit, or Emolument; and there

with agrees the Judgment in the faid Cafe of the Dean

of Pauls. The second Difference was, If Land of the year-

the Purposes following, f. to find a Priest to pray for Souls, and that the Priest shall have for his Salary 10 l. and to

distribute between twenty of the poor Men and Women

other 10 1. yearly for ever for their Sustentation, in that

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Rep. 205, 206.

108.2109.2.11Co. 13. 2. Dyer 368. pl. 47. 4 Leon. ly Value of 20 l. per ann be given upon Condition, or to Mo. 131. 264.

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Cafe the King shall have but the to I. limited to the Priest. and not the Land: But if the fame Land had been given find a Priest, and for the Maintenance of 20 poor Men, in that Case the King thall have all the Land, altho' in the Employment the Priest had 10 % and the Poor the other 10 1. And the Reason and Cause of this Difference is be- Hob. 124 Duke ause in the first Case there was a good Use separate and 107. Moor 265. distinct from the superstitious Use; and therefore, God for-206, 207. Cro. bid that the ill Use shall swallow up the good Use, and a Car. 249. Cro. bid that the ill Use shall swallow up the good Use, and a El. 449. certain Sum was appointed to the Priest, which Sum the King shall have as a Rent by Force of the said fourth Branch; And in such Case if the Land shou'd be given to the King, the good Use wou'd be taken away, which was never the Intent of the Act; for the Intent of the Ma-Co. Lit. 342 alters was, as appears by the Preamble, to advance and con-1 Co. 24. b. tinue good and charitable Uses, as Grammar Schools, Augmentation of the Universities, and Provision for poor Men. is expressed in the Preamble. And there is another Clause concerning the Continuance of such charitable Uses in the Body of the Act, by which Power is given to cerain Commissioners, To assign in every Place wherein any Guild, Fraternity, Priest, or Incumbent of any Chauntry, by the Foundation, Ordinance, or first Institution thereof, should on with to have kept a Grammar School, or a Preacher, &c. And also to enquire, What Money, Profit, or Benefit any poor Peron by virtue of any Conveyance, &c. had or enjoyed within fve Years, &c. out of any College, free Chappel, or Chaunn, and other the Premisses given, limited or appointed to the King by this Act; and thereupon to make Assignments to the Poor, which Clause is to be intended only when the Provision for the Poor is derived out of a superstitious Thing, or to be performed by the Person who was to do the Superstition, as out of a College, or Chauntry, or free Chappel, or when all the Land was given to find a Priest, and that the Priest should find a Grammar School, or freacher, or should pay so much to poor Men: And in such Case it was necessary to make such Provision; for the Colleges, Chauntries, free Chappels, and Priests praying for Souls, who should make Distribution to the Poor, &c. were dissolved, and their Possessions given to the King by this Act, and therefore it was very well and necessary to add the faid Clause for Continuance of the said charitable Uses, But that it doth not extend to, when Lands are given to divers Feoffees upon Condition, or to the Purposes following, f. to find a Priest, and of the Issues of the Land to pay him a certain Stipend, and out of the Residue of the Fronts, that the Feoffees shall find a gram. School, or fustain

poor Men, for these are not derived out of the superstitious Use, nor to be distributed by the superstitious Persons, but by the Feoffees, Oc. who remain Persons able to distribute, and continue the good Uses, which are distinct from the Superstitious Uses; And the Reason of the second Part of ( ) Cro. El. 449. the last Difference is because nothing is limited to the fuperstitious Use in certain by the Donor, or Devisor himfelf, so that if the King shou'd not have the Land, the K. wou'd have nothing, but the superstitious Use wou'd remain, and the Intention of the Act (as hath been faid, and fo it ought to be expounded,) was to take away all fuch Superfition; for the King can't have any Rent in such Case, for every Rent ought to be a certain Sum; And altho' in such Case the Feoffees have always imployed a certain Sum, yet they have not Power to make Alteration of the Substance of the Gift, but the Intent of the Donor The 3 Diversity, shall stand. A 3 Difference was taken, when the Priest has a certain Salary, (and yet to the finding of him other Things, as Books, Bread, Wine, Vestiments, Oc. as has been faid are tacite implied and requifite which are incertain) and beside that a good Use is limited, there the K. shall not have all by Reason of the implied Incertainty; But if Land is given to any express superstitious Use pro-

hibited by the Act, without Limitation of any Certainty

for the finding of it, there all is given to the King by the

faid Act; the Reason of the first Branch of this Difference

is, that a good Use expressed shall be preferred before any

Thing implied, and incident to a superstitious Use. 2. The

finding of Books, Vestiments, Wine and Bread, are not of

themselves superstitious, therefore the Makers of the Act

did not intend to respect them, as appears by divers Reso-

lutions and Judgments hereafter cited, but when the expref-

fed Intent was not only to find a Priest, but also a good

Use, there the King shall have only that which the Priest

himself had, or which he was intended to have; The other

Part of this last Difference is agreed and resolved before.

The 4 Difference, or potins an Explanation of the former

Differences, was taken between a fole Priest to pray for

Souls within the third Branch, and a flipendiary Priest

within the fourth Branch; for when Lands are given to

one or divers Feoffees to find one fingle Priest with the

Issues and Profits thereof, with a certain Limitation of

some Sum for his Sustenance, there if no good Use is limi-

ted (as hath been faid) all the Land is given to the K.

for the Reasons aforesaid: But when a certain Sum is limi-

ted to the Priest for his Stipend, and beside that a good

Use is expressed, it amounts to as much as if the Land

had been given that the Feoffees should pay a certain Sum of Money to a Priest, in which Case he is a stipendairy Priest within the fourth Branch of the Act, and in such Case

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the King shall have but a Rent. The 5 Difference was taken, When a certain Sum is limited to a Priest, and divers other Uses are also limited, which of themselves are not prohibited, yet if they depend upon the superstitious Use, all is given to the King. As if a Man gives Land of the Value The 5 Divertire of 20 1. and that the Feoffees of the Profits of the Land Latch. 38. shall pay to a Priest 10 1. and the Residue for Vestiments. Books, Bread, Wine, Oc. for the Celebration of Mass, Oc. or to one or divers to visit, and see that the Service be done, or for the Reparation of the Chappel in which the Service is to be done, or for the repairing of the Tenements, or to poor People to be present at it, or some such like Intents or Purposes which depend upon the superstitious Use, or for an Ornament or Continuance of it. there all is given to the King, but when the other Uses are not depending upon it, but extend to distinct and separate good Uses, there the good Uses shall save the Land.

As if Land to the Value of 20 l. is given to pay a Priest Cr. El. 449. Cr.

Church and the Re. Car. 249. 10 Marks to fing for Souls in fuch a Church, and the Refidue of the Profits to repair the Church, altho' that by a Means concerns the Continuance of the faid superfitious Use, for as much as it is to be celebrated in the same Church; or in fuch Case if the Residue of the Profits were limited for the finding of the Ornaments of the Church, altho' they are by a Means Ornaments also for the Celebra- Cr. Car. 248. tion of the said superstitious Use, yet in both these Cases, 456. in as much as the Reparation of the Church, or the finding of the Qrnaments does not depend upon the superfitious Use, nor immediately concerns the superstitious Use, in such Case the Land is not given to the King: So in the same Case, if Part of the Profits are limited for the Repairs of the Church, or to find the Ornaments of the Church. and the Residue of the Profits are limited for the Reparation of the Houses so given, the King shall not have the Land: for Reparation of Houses of themselves is not an Use prohibited, and therefore being joined with a good Use shall fave the Land, and yet by a Means both concern the Continuance of the superstitious Use: But the Statute is to be intended of immediate Uses, and not only to suppress superstitious Uses; but also to continue good Uses, The 6 The 6 Divertity, according to the Intent of the Makers of the Act. Difference was observed, When all the Uses are superstitious, and when not; for when all the Uses are superstitious, there in what Certainty or Manner foever they are limited, and of what Value soever the Land is, yet all the Land is given to the King. As if Land of the Value of twenty Pounds per annum is given to the Intent, that ten Pounds out of the Issues and Profits thereof

#### ADAMS & LAMBERT'S Cafe. PART IV.

shall be paid to a Priest 5 1. for the Maintenance of the Obit. and 51. to find Lamps and Lights before fuch Images in fuch a Church: In this Case it was objected, That the K. shall have but several Rents, for the Priest was but a stipendiary Priest, and the Land was not given to find him: Also the Clause concerning Obits, Oc. gives to the King but a Rent, when but Part of the Profits are limited and appoint. ed to it; and therefore by none of the faid feveral Branches by itself the K. shall have the Land but only several Rents : But it was resolv'd that in such Case, all the Land by the Equity and true Construction upon all the said Act shall be given the King; for inafmuch as all the Profits are limited to superstitious Uses, it was the Intent of the Act to give all the Land to the King by a reasonable Construction upon the Coherence and Intention of all the Parts of the Act: And as to the Objection which was made, That the King in the principal Case shall not have more than the Priest had. because the fifth Branch, which is the Conclusion of all the four Branches precedent has fuch Words, In as large and ample Manner and Form, as the Priefts, Wardens, Minifters, Governors, Rulers, or other Incumbents of them within five Years, Oc. bed occupied or enjoyed: It was refolv'd, that these Words do not abridge that which before was by any of the precedent Clauses given to the K. 2. That these Words can't be ferred to the third Clause, s. When Land was given to one or divers Persons to find with the Issues and Profits a sole Priest, for there the Priest had not the Land; and therefore if the faid Clause was restrictive, and if the King should not have more than the Priest had, the King would have nothing, for the Priest had nothing, and yet every one agrees, that the King in fuch Case shall have the Land. But these Words are referred, reddendo fingula fingulis, to the 1, 2, & 4 Branches, for by the first two the Land, and by the fourth a Rent is given to the King; and therefore the faid Words may well be referred to them, and can't be referr'd to the faid fourth Branch, for the King can't have the Land, in as ample and large Manner as the Priest had it, when in Truth the Priest had nothing in the Land, but the Feoffees were seised thereof; or the said Words refer only to the fourth Branch concerning Stipendiary Priests, as Popham Chief Justice held: And the Case at Bar was within all these Differences; for I. The Land was devised upon Condition to find a Priest. 2 In this Case one of the superstitious Uses was incertain, for, for the finding of Lamps and Lights no certain Sum was limited; and if all the Land had been given to this incertain Use, the King should have had all the Land. 3. Here was not any good Use, for altho' the Maintenance and Sustentation of poor Men was good, yet Maintenance of them to pray for Souls was superstitious, and prohibited by the

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Act: And altho' these Prayers are not appointed to be ade in any Church, Chapel, Oc. or other publick Oratory, et it was resolv'd, that it was prohibited by the said Act, a Co. 24 b. (as some held) directly within the Words of the Clause kerning Obits, J. Anniversary or Obit, or other like Thing, ment, or Purpose, or of any Light or Lamp in any Church or hel: So that these Words In any Church or Chapel, are reand only to Lights or Lamps, and not to those preced. Words other like Thing, Intent, or Purpofe. And praying for Souls, a like Intent or Purpose to an Anniversary or Obit, for all ns to pray for Souls, or as others held by the Equity of the Hob. 123. And it feem'd to some that the Case is stronger, because the principal superstitious Use is to be done in the Church. These Prayers for Souls by the poor Men are in a Maner dependant upon the other superstitious Uses, and of one me Kind, and Nature with them. 5. In this Case I the Uses were superstitious, and therefore all the Land as given to the King: And by these Differences you may is hath been faid) better understand the Judgments and Reblutions which have been before these Times had upon the everal Branches of this Act, and every one of them well ands with the other, and no Contratiety amongst them. and all these Differences are well proved and approved by ormer Refolutions, Decrees, and Judgments; and therefore will make a fummary Report of the former Resolutions, ecrees, and Judgments which were cited and vouch'd in

his Case, and first of the Resolutions: Sir Bartholomew Read by his Will in writing devised his Sir Bartholo ands in Landon to the Company of Goldsmiths, to the In-Moor 654. temements, and should pay all Rents issuing thereout, and sould keep an Obit, and should spend at it yearly 33 s. A and find perpetually a Priest to sing Mass for his Soul, ho should also keep a Grammar-School, and chiefly for the bor, and to receive 10 1. yearly for his Salary, and the faid enements were then of greater Value, f. of 50 l. per ann. han the faid superstitious Uses. And it was resolv'd by hey and Anderson Chief Justices, upon Conference with Roger Manwood Chief Baron, and Periam Justice, that Il the Tenements were given to the King by the faid Act, altho' there was a good and charitable Use, s. to find a nammar School chiefly for the Relief of the Poor, yet beole it was mix'd with a superstitious Use, and nothing in tain was limited to the good Use, in such Case the intain Mixture of the bad Use with the good Use infects good Use, as a little Poison mixt with a great Quantity

ADAMS & LAMBERT'S CARE. PART IV.

of Wine, or as Truth mixt with Covin (Covin is fo ill an Herb that it makes the whole unfavoury, and turns the Goodness of the one into the Badness of the other, as it is faid in Pl. Com. 51. a. Secondly, the good Use is derived out of the superstitious Use, and to be performed by the Priest, for these Reasons the good Use in this Case shall not fave the Land. Also altho now upon the Matter it is as if the good Use had been omitted, and that a certain Sum was limited for every of the Uses, yet when all the certain Uses were for perstitious, all the Land shall be given to the King. And ther Case was resolv'd by them, that Sir John Tate seised of certain Houses in London by his Will in writing devised them to the Company of Dyers to repair the Houses, and to find a fecular Priest for ever to pray for Souls in the Church of S. Michael in Cornhill, paying to him a competent Living not less than 8 Marks per ann. and the Houses then wer of greater Value; and yet because it was incertain wha Sum the Priest should have, and if the Sum had been certain, yet because the Land was given to find a Pries John Allen's Cafe and no good Use was limited, the King shall have all the

ir John Tate's

Moor 264.

Land by the faid third Branch of the faid Act. Another Case resolv'd by them was, that John Allen by hi Will in writing devised Houses in Eastcheap to the Compan of Goldsmiths in London to find an Obit for ever, which Hou fes then were and so continu'd of the Value of 331. 135. 44 per ann. and 23 s. 4 d. were only employ'd to the faid superft tious Use. And it was resolv'd, that the King should hav all the Land, for the Devisees by their certain Imploymen can't fave the Land when the Gift itself is incertain, no any Disposition in certain by the Devisees can alter the Na thre and Substance of the Gift, nor the Operation of the St tute upon it.

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Another Cafe was also resov'd by them; One Pele dev fed by his Will in Writing certain Houses in London to the Clothworkers of London, to the Intent that they for ever thou pay to such Priest who should pray for his Soul in the Paris Church of Chilham 9 l. 6 s. 8 d. for his Salary; the Kin shall not have the Houses, for they were not given to find Priest, but to pay to a Priest a certain Sum.

Walpool's Case. One Walpool in 23 E. 3. by his Will in writing, devised Dukess. 25id.14 the Company of Goldsmiths in London, certain Houses London of the Value of 30 l. per ann. to the Intent, that th with the Issues and Profits thereof should find two Pries paying to each of them 61, 13 s. 4d. for his Salary; and was refolv'd by the faid Justices, that the Queen should ha the Houles, for it was within the third Branch of the A inalmu RT IV. ADAMS & LAMBERT'S Cofe

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herewith or wherely they were maintain'd, &c. and forafuch as no good Use was limited, and all the Use express'd
as superstitious, for these Reasons it was resolv'd, that the
solutes were given to the King, and yet the Salaries of the
siess were certain.

Anno 4 H. 8. William Caley by his Will in writing devised Caley's Cale. main Houses in London of the Value of 40 Marks per ann. Moor 651, 654 the Company of Drapers, to the Intent to repair them inciently for ever, and of the Issues and Profits of them to gintain a Chaplain in the Church of S. M Woolnaugh, to fing lass every Day for the Souls of Rich. Shore and his Wife, and to have for his Salary 61. 13 s. 4 d. and to find an Obit in he same Church for the Soul of the said Richard Sbore, pending upon it 20 s. in Form following, s. the Wardens of e faid Company shall have Part, and the Beadle Part and Part to be spent upon Bread, Beer, and other Necessaries at Drapers Hall amongst the Brethren there, and the Residue n be distributed amongst the Poor dwelling within the Precine of their Hall to pray for Souls, and altho' the Salary of the Priest was certain, and the Expences of the Obit were certain, and the Prayers for the Souls were to be made in Drapers Hall, and not in any Church or Chapel, and the Distribution of Bread and Beer amongst the Poor is of itself a good and charitable Use, yet forasmuch as all the Uses were superflitious or depending thereupon, it was resolv'd, that

the Houses were given to the King by the said Act.

Anno 5 E. 4. Gregory by his Will in writing devised his Gregory's Case.

Houses in London of the Value of four Marks per annum to the Company of Skinners, to the Intent with the Profits thereof to find an Obit for ever in the Church of S. Anthony, spending at it 6 s. 8 d. and to distribute amongst the Poor of the faid Parish to pray for one Soul 6s. 8 d. and with the Relidue of the Profits to maintain the Reparations, and with the Overplus to new build them when Need thould be; and altho' the Sum for the faid superstitious Uses (whereof one was to be done out of the Church or Chapel) were certain, and the Reparation and new building of the Houses themselves were good, because they concern'd the Habitauon of Men; yet forafmuch as these Uses were for the Conunuance of the superstitious Uses, & quodammodo depending thereupon, for this Reason it was resolv'd, that the Houses were given to the King by the faid Act: Several other Resolutions of the said Justices were cited, but forasmuch they all tend to the Effect of those which have been cited before, to avoid Prolixity I have omitted them. Nota Reader, the Branch of the said Ast next following the last Clause of Obits, concerning the Employment of the Sums

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of Money, or Profit of any Lands, by any Corporation, Guild, Fraternity, Company, or Fellowship of any Mystery, or Craft, for the Maintenance of a Priest, Obit, O'c. was but Explanation of the faid fourth Branch, to ouft a Scruple which some might conceive, Whether a Body incorporate might stand seised to such Intents, and upon such Trusts as is aforesaid: But it appears by all the said Resolutions, as well Bodies Politick and Corporate as private Persons are within the former Branches of the faid Act, for the Letter of the Act is general and includes all as in this very Cafe it was refolv'd Now to proceed to Decrees; In 5 E. 6. as it appears in libro Decret' in officio Rememer' Dom' Regis. In the Exchequer divers Decrees were made upon the Will of (a) Comberton in 5 H. 4. of Cromer (b) in 10 H. 6. of William Rus fe) in 12 H. 6. of one Penne in 5 H. 6. and of divers others in the Court of Augmentation; but because they are agreeable to the faid Resolutions and Differences before taken as I conceive, altho' they are not fully there written, I will omit them and proceed to Judgments given in the Queen's Courts upon Argument and great Confideration judicially. And as to the Cases of Hewer & (d) Wotton, & Chibnal (e) & Witton, they were affirm'd to be good Law, and that there were two principal Reasons of the Judgment in the same Cases: One because nothing was limited to the Priest but 2 d. or 3 d. every Week, which was not within the faid third Branch of the Act, for with such a small Sum a Priest can't be found or maintain'd. And the Letter of the faid Statute is To the finding of any Priest, &c. and wherewith or whereby any Priest was suffain'd, maintain'd or found; and with such small Allowance he can't be sustain'd, maintain'd, or found. Also in the one Case he should sing Mass but every Sunday, and Dirige once a Year, which was (as was faid) within the Clause of Obits, f. To fuch like Intent or Purpofe. 2. Admitting a certain Salary had been to the Priest sufficient for his Maintenance, yet because there were good Uses (f) separate from the superstitious Use, s. in the one Case 3 s. 4 d. to the Poor, Oc. and in the other to find Ornaments of the Church, for these Reasons Judgment was given in both the Cases, that the Land was not given to the King. It was also adjude'd for these two Reasons that were given in Hewet & Wotton's Case (for the said two agreed with the said Case of the Dean (c) Antes 106.b. of (g) Paul's, which the L. Dyer has briefly touch'd in Part) 108 a 129 a 110 b that the Q. shall not have the Land for two Reasons. 1. BeDyer 368. pl. 47. cause the Land (b) itself was not given to find a Priest,

to that it was not within the third Branch of the Act,

(a) Moor 649, (1) Moor 652. (6) Moor 6,9.

(d) Duke 92 ntea 109. b. (e) Antea 109. b. Duke 92. Co.Ent. 197.pl. 7. 2 Siderf. 15.

(f) Duke 92.

lenk. Cent. 245, but to find an annual Sustentation of 10 Marks for a Priest, Moor 131, 264. Moor 131, 264.

PART IV. ADAMS & LAMBERT'S Cafe:

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that it was within the fourth Branch, and not within the hird. 2. It was refolv'd in the faid Case of the Dean of (a) Paul's, that if Land is given to pay 10 Marks to a Priest, (a) Antes 106.b. and 40 s. to the Maintenance of an Obit, in that Case if 108. 2. 109. 2. both are found within the five Years, the King shall have all Dyer 368. pl. 47. the Land, because both the Uses were superstitious by the 4 Leon. 156,157. Judgment of the Law, upon the Coherence, (as has been 10 Co. 83. b. aid) of all the Act: But in the same Case because the Obit Moor 131, 264. was not found within the five Years, it was therefore adjidg'd, that the King should not have the Land: And therefire in the same Case of the Dean of Paul's, this Difference was taken and refolv'd, when certain Sums are limited to the superstitious Uses, and one Use is separate and divided from the other, there the finding of the one shall not give the whole Land to the King, but only the Sum appointed to the superstitious Use which was imploy'd within the five Years: But if the one Use depends upon the other, there the finding of the Principal or any Part of it gives all the Land to the King. As if Land is given to the Intent that an Obit hall be found in such Chapel, and that upon the Obit 10 s. hall be diffributed and employ'd to the Priest, and to divers poor Persons who shall be present at it 6 s. 8 d. and the rest of the Profits to the Reparation of the faid Chapel, in this Case if the Obit is maintain'd in any Part within the five Years, altho' the 6 s. and 8 d. is not employ'd to the poor Men, nor any thing upon the Reparation of the Chapel within the five Years, yet all the Land shall be given to the King, because all the Uses depend upon the first: So in the same Case Wray Chief Justice said, that it was adjudg'd, that where certain Houses call'd the Bull were given to find a The Case of the Priest to pray for Souls, &c. and other Tenements called the Swan & Bull. Swan were given to the same Feoffees to find an Obit, &c, and the Feoffees imploy'd the Profits of the faid several Houses to contrary Uses, s. the Profits of the Bull to find the Obit, and the Profits of the Swan to find the Priest, yet forsmuch as the original Gift was superstitious, and the Employment superstitious, altho' the Employment did not purwe the Gift, yet in both Cases such Employment within the five Years was sufficient to give the Land to the King. So if a Man gives the Manor of Dale and (c) the Manor of (c) Duke 93 Sale to find superstitious Uses, and the Feosfees with the Profits of the one Manor find the superstitious Uses, and employ the Profits of the other to the Use of the poor Inhabitants of the same Town, or to bear the common Charges of the Town, yet both the Manors are given to the King, for if the Feoffees employ any Part of the Profits of the Lands which they have, and which were given for the Maintenance of the superstitious Uses, all is given to the King; But if the Feoffees before the five Years have conveyed Part of the Land to another in Fee, and employ the Profits

ADAMS & LAMBERT'S Cafe. PART IV.

of that which remains in their Hands for the Maintenance of the superstitious Uses, and no Part of the Profits of the Land of the fecond Feoffee is employ'd within the five Years, there the King shall not have the Land of the second Feoffee, but only the Lands which the first Feoffees have, for the Employment by the first Feoffees of the Land which they had cannot bind the second Feoffee, for the Land in which they had not any Estate or Interest; and that well stands with the Words of the faid third Branch, f. To the finding of any Priest, and wherewith or whereby any Priest was suffain'd, mainto the Iecond Feoffee (whereof no Part of the Profits was imploy'd to superstitious Isses within the five Years) that is not within the faid Words of wherewith or whereby, for neither with nor by the Land of the second Feoffee the superflitious Uses were found within five Years, but only with, and by the Land which remains with the first Feoffees; and in the said Case of the Dean of Paul's, some held that a Proviso that the said Act shall not extend to the Manors, Lands, Tenements, or other Hereditaments of any Cathedral Church, &c. other than to fuch Chauntries, Obits, or Lamps, or any of them within five Years, &c. and in the faid Case the Land was Parcel of the Possessions of a Cathedral Church; and the faid Land did not appertain to a Chauntry, f. within the first or second Branch, but that Case was within the fourth Branch, to which this Word of the Proviso (Chantry) doth not extend; and as to the Words Obits, &c. forafmuch as but Part of the Profits was affign'd thereto, altho' the Obit had been found, that the Land was nor thereby given to the King.

Tumer's Cafe. (2) Co. Ent.275 pl. 11. Mo. 131 653, 659, 264. 2 Ande: L 100. 2 Siderf. 46.

Trin. 18 Eliz. Rot. 142. In an Information of Intrusion against Lucas and Collier, upon the general Issue, a special Verdict was found to this Effect; Turner feised of certain Houfes in London in Fee, of the yearly Value of 41.6 s. 8d. Anno 2 H. 6. devised them upon Condition to find an Obit within the Parish of S. Mary Patens in London, Spending thereat so much as the Devisees would in their Discretions, the Devifees expended only upon the Obit 6 s. 8 d. per annum, and it was adjudg'd that the Queen should have the Houles; 1. Because the Appointment was incertain, altho' the Employment was certain. 2. That all (b) the Use express'd by the Devisor was superstitious: And therefore it was faid, It Land to the (c) Value of 51. is devised to find an Obit, spending upon it 31. per annum, altho' a certain Sum is limited, yet foralmuch as the Land is given to find an Obit, and no other Use is express'd, the Land in such Case thall be given to the King, for the Land is given in the fame Cale wholly (as the Statute speaks) to find an Obit, and therefore within the first Branch of Obits.

Trin. 20 Eliz. Ret. 589. inter Colbers & (d) Dale in B. L.

(1) Dake 93

(c) Duke 93.

Colborn & Dales's Cale. (d) Co. Ent. 207 pl. 11. Moor 653, 649. 1 And. 99, 100.

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ipon Demurter the Case was such; Tho. Wells 12 E. 4. devised divers Houses in London of the yearly Value of 24 1. to his Wite for her Life, the Remainder to the Parson and Churchwardens of S. Edmonds and their Successors; and devised that his Wife during her Life, and after her Decease they in Remainder should find a Priest who should perform Divine Service at the Altar in the Chapel of our Lady in the Church of S. Edm. for the Souls, &c. and that the same Priest should be iding and helping at Divine Service in the same Church, and devised, that his Wife during her Life, and those in Remainder after her Death should pay him for his Salary 61. 13 s. 4 d. Further he devised that they thould find an Obit with 6 Priests and appointed 22 s. in certain to be imploy'd upon it, whereof Part should be distributed amongst the 8 poor of the Trade of Drapers, which should come to the faid Obit, and could not come. Also he appointed 16 d. yearly to the Parson of S. Edm. for beading of Beads; Every Sunday 3 s. 4 d. to the Friars of S. Augustin to pray for his Soul; also 4 s. yearly to be paid to the Preacher at Paul's upon good Friday; to 3 Preachers of the Spittle to commend his Soul to the Prayers of the People 1251 4d. Alfo 36.4 d. to the Wardens of the Company of Sheermen to distribute amongst the poor Almsmen of the same Trade; to the Intent that those of the Wardens with 8 or more of the faid Company upon Warning should come to his Obit: Also he appointed Accounts yearly to be taken, and that the Churchwardens of S. Edm. should have the letting and setting of the Lands; and the C. Ws. of S. M. Wolnaugh should come yearly and have for their Pains 6 d. apiece. And the C. Ws. of S. Edm. to have 6s. 8d. And 11s. 4d. yearly he appointed for the finding of Books, Vestiments and Ornaments of the Chapel, where he appointed his Obit to be celebrated, and that all the Revenue comingof the Premisses should be in several keeping separated from other Monies in a Chest, for the Reparation and new building of the Tenements. And it was adjudg'd, that the faid Houses were given to the K. by the said Act. In which Judgment these Things were observ'd; I. That the De- Antes 1051 vise was to his Wife. 2. That it was a Devise to his Wife for 106. 21 her Life. 3. That every superstitious Use had a certain Sum limited and appointed for the Maintenance of it. 4. That all the Uses were either superstitious, or were depending upon the superflitious Uses, or tending to the Maintenance or Continuance of them: and that was the principal Cause and Reafon of the Judgment. Tr' 30 El. Rot. 709. inter Adams & Stokes Adams & Stoke's in B. R. upon Demurrer the Case was such; Walter Dunfton devised Lands to the Parson and C. Ws. of S. Botolph's upon Condition to find a Priest, and that he should have for his Salary 61. of the Issues and Profits of the Lands. Also he devised yearly for ever 13 s. 4 d. to the Prisoners of Newgate and Ludgete, at the Day of his Death to pray for his Soul, besides the said sole Priest, and the Residue for the Reparation of the Tenements, and to augment the Priests Portion. And it was refolv'd, that the Land was given to the King by the faid Act; for the praying for Souls by the faid Prisoners,

ADAMS and LAMBERT'S Cafe. PART IV.

altho' it was out of Church and Chappel, was superstitious and the Augmentation of the Priest's Maintenance incertain. And this Resolution was affirmed for good Law by Bopham Chief Justice and divers others; but Judgment was

not entred in the Roll.

Wherston's Case 4 Leon. 159, Hern 193. Anders. 100. Moor 130.

Co. Ent. 384

pl. 14.

Pascha 2 & 3 Ph. & Mar. Rot. 186. in the King's Bench Whetstone's Case was adjudged, That where Lands were given to find an Obit in such a Chappel appointing a certain Sum upon it, and that the Residue should be employed on the Reparation of the Chappel, in which the Obit should

be celebrated; And it was adjudged that all the Land was given to the King, for the one depended upon the other. And Popham C. J. said, that Pascha 10 Eliz. Rot. 398. in

an Information in the Exchequer the Case was such; one Draiton seised of Lands in London in Fee devised them to the Dean and Chapter of Pauls upon Condition that they

should find two Chaplains to pray for his Soul in a Chappel newly there built by him; and to pay to them for their Salary 13 l. 6 s. 8 d. and to find an Obit, appoint-

ing upon it a certain Sum, and to repair the Chappel, and all this was found within the five Years, and it was adjudged against the King; and that agrees with the Opi-

nion in the Case before cited of the Dean and Chapter of Paul's before upon the Proviso of this very Act.

Partridge's and Walker's Case. Moor 693, 694. Hern. 193.

Hill. 37 Eliz. Rot. 715. inter Partridge & Walker in the King's Bench, the Case was; That one Hill devised certain Houses in London to the Parson and Churchwardens of the Church of S. Brides to find for ever his Anniversary, appointing upon it 20 s. and to pay to the Poor 5 s. 6 d. in bonorem & duplicationem annorum in quibus Christus vixit in terra: And it was adjudged, that the Land was not given to the King, for the Payment of the 5s. 6d. to the Poor in honorem, &c. was a good and laudable Use in Commemoration of the Years of our Saviour, the continual Me-mory of which is most comfortable and necessary for every Christian; But it was agreed in the principal Case at Bar, s Rel's Reg. 206. that if the Devisor had limited by express Words, or by a-

ny Words which might imply his Intent to be, that the Devisees for the Advancement of his Blood should have the Residue of the Profits, that wou'd be a good Use, and wou'd save the Land; and in such Case the King shou'd have but the Rent. And this Case was very well and at large argued by the Justices; And it was the first Case that Sir Christopher Yelverton argued after he was constituted Ju-

flice of the King's Bench.

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## Hill. 45 ELIZABETHE. In Communi Banco.

#### ACTON's Cafe.

of Peterborough, Acton Patron, and Cartmel Incum- 21. Moor 678. bent, for the Church of Claycotton being above the yearly Value of 8 l. The Queen declar'd and made Title to present by Laps ratione acceptationis duorum beneficiorum; The Patron and Incumbent severed in Pleas, but both their Pleas were to this Effect; Anne Baronels of Mounteagle in her Widowhood retained the faid Cartmel to be her Chaplain according to the Statute of 21 H. 8. and he having the faid Cap. 13. Benefice of Claycotton obtained a Dispensation with Confirmation of the Queen according to the Statute, and pleaded all at large, and that afterwards he accepted the Vicarage of G. O'c. and traversed, absque hoc quod pred' Ecclesia de C. pratextu acceptationis Vicaria de G. virtute Statuti vacavit, Oc. The Queen replied, and contelled the Retainer of him by the faid Baroness of Mounteagle, and that he obtained the Letters of Dispensation front &c. But further faid, that before the faid Cartmel was presented to the faid Vicarage of G. the faid Baroness of Mounteagle took to Hufband Henry Lord Compton one of the Barons of the Realm, and so was Covert Baron, and had lost her Dignity of Baroness of Mounteagle, and afterwards Carimel the Defendant Co. Lit. 16. b. accepted the faid Vicarage and was thereunto admitted, infituted and inducted, and thereupon the Def. demurr'd in Law. And it was objected by the Queen's Council, that the Body of the Act of 21 H. 8. contains a general Prohibition, that if any one has a Benefice of the Value of 8 l. that he shall not take any other Benefice with Cure, then if this Case is not within the Provisoes, then the first Benefice became void by the Acceptance of the second; and the first Proviso which is material to this Purpose is, That every Datchess, &c. and Baroness being Widows, may have Anter 78.6. two Chaplains, whereof every one of them may purchase Licence sect. 18. or Dispensation, to receive, have and keep 2 Benefices, &c. And the 2 Proviso material to this Purp. is, Provid. always that every sea. 33. Dutche [s

Dutchels, Oc. and Baronefs Widows, which have taken, or hereafcer shall take any Husbands under the Degree of a Baron, may take fuch Number of Chaplains as is above limitted to them being Widows, and that every fuch Chaplain may purchase Lirense, &cc. ut supra. And it was strongly urged, that this Case was Cafus our ffai, and out of thele Proviloes for divers Reasons: 1. The first ought to be expounded, that the Bas roness ought to be a Widow as well at the Time of the Acceptance, as at the Time of the Retainer, for if it shou'd be sufficient that she shou'd be a Widow at the Time of the Retainer, then the said second Proviso wou'd be in vain, for then it wou'd not be material whom she afterwards married, J. Noble, or Ignoble; But for as much as the Makers of the Act intended, that if the marry'd after, that then the thou'd be out of the first Proviso, they therefore added the fecond. And without Question she is out of the fecond, for that provides only, when such noble Woman marries with one under the Degree of a Baron, and their Reason that they extended the last Proviso when they marry'd under the Degree of a Baron was, because if they marry'd a Baron, or other superior Degree, then the Wife need not have Chaplains, because her Husband might have Chaplains by this Act, which wou'd be sufficient for both, being one Person in Law, and all of one Family. And that the Retainer and the Acceptance ought to concur; It was faid if a Noble Man, or Noble Woman retains a Chaplain and dies, the Chaplain can't take two Benefices within this Act, yet the Retainer was lawful, but the Person who made the Retainer ought to continue when the Chaplain accepts his fecond Benefice: Also it was faid, that it was adjudged in the Case of Ralph Earl of Westmorland, that where the said Earl retained a Chaplain, and afterwards was attainted of high Treason, and afterwards and during his Life the Chaplain having a Benefice of the Value of 81. accepted a second Benefice with Cure, and it was adjudged that the first Benefice was void, for altho' the Earl was alive, yet the Quality of his Person was altered, for by the Judgment he became ignoble; vide Stamford, as if the Treasurer or Comtrolder of the King's House, &c. retains a Chaplain, and afterwards is removed out of his Office, now the Chaplain can't accept a 2d Benefice, for now his Quality is altered, and the Cause in Respect whereof he was to have a Chaplain is removed, and so when the Baroness Widow takes Husband, her Quality is altered, for now the is not fui juris, but only fub poteffete viri: And therefore, if the latter Proviso had not been, if fuch Baroness after the Retainer had married with a Gent. under the Degree of a Baron, her Chaplain could not accept a ad Benefice, for the Quality of the Baroness by her marriage was altered; and the ought to remain at the time of the Acceptance of the 2d Benefice in the same Quality as she was at the Time of Retainer. 2. It was objected that this Case was out of the

Poffes 118. b.

Stanf. Cor. 195. b. Pofica 118. b

Co. Lit. 16. b.

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Provisoes, because if a Baron marries a Widow Barones, in that Case the Baroness can't retain any Chaplain within t faid A&, for the Words of the Act are, Every Baroness bei Widow, which exclude a Feme Covert Baroness, then if the is expluded to retain, by the same Reason her Retainer to have Power by Force of the Act to take a second Benefice is loft by the Marriage, for as much as the now having married with a Nobleman, his Chaplains may perform divine Service to them both, and the Wife of a Nobleman need not have Chaplains by the Judgment of the whole Parliament, for the Act has not made Provision for any such Wives but only for a Baron's Widow, or the Wife of one under the Degree of a Baron who could not have any Chaplain within this Act; But in our Case at the Time of the Acceptance she who retained was the Wife of a Baron, who may have Chaplains by Force of this Act. 3. It was laid, that this Act was always confirmed firefly against Non Refidency, and Pluralities as a Thing very prejudicial to the Service of God, and the Instruction of his People: And therefore if a Bishop is translated to an Archbishop, or a Baron is created an Earl, now he has both these Dignities, and as it is commonly faid, Quando duo (a) jura concurrunt (a) 7 Co. 14 b in una persona, aquum est ets effent in diversis; But yet with- Cawly 209 in this Act he can have but as many as an Archbilhop or an Earl may have, for altho' he has fundry Dignities, yet he is but one and the same Person to whom the Attendance and Service shall be done: So if a Baron is made Knight of the Garter, or Warden of the (b) Cinque Ports, he shall (4) Ames on h have but three Chaplains in all, & fic de smilibus: Qued fuit concessum; Quia difficile est ut unus homo vicem duorum fuffineat. But on the other Part it was argued and resolved by the Court, that in the Case at Bar Cartmel after the Marriage might accept the faid Vicarage within the Letter and Meaning of the faid Act, for without Question the Retainer of Curtmel was not determined or countermanded by the faid Marriage. And as to that it was faid that there are two Manners of Retainers: One at the Common Law. and according to that a Man may have as many Chaplains as he will: Another according to the faid A&, and by that he is restrained to a Number; and the first which he retains are his Chaplains according to the faid Act, and shall be first (c) preferred, as it was adjudged Pafeba 31 Eliz. in (c) Cro. El. 724 Com' Banco in (d) Skefling's Cafe. & Mich. 41 & 42 Eliz. 1 And. 201. in the King's Bench in (e) Drwy's Cafe. And therefore if (d) And any Officer allowed by the Statute to have one, two, or and Moor to more Chaplains, retains a Chaplain, and afterwards is removed from his Office, in that Case the Retainer by the com. Jenk. Cent. 272, Law remains, but the Retainer upon the Statute is deter 6 Antes go. a. mined, for after the Removal he can't be Non-relident, nor

(a) Antes 117.b.

(6) Stamf. Cor. 295. b. Antea 237. b.

accept another Benefice: So if an Earl or Baron retains 2 Chaplain and, before his Advancement, is attainted of Treason, as in the Case of the Earl of (a) Westmorland, there the Retainer according to the Statute is determined; and after the Attainder such Chaplain can't accept a second Benefice, because he who is attainted, by his Attainder is a dead Person in Law; and now as (b) Stamf. pla. Coron. fays from a Nobleman (by the Judgment by which his Blood is corrupted) he is become ignoble, and therefore his Dignity is determined; And altho' the Wife of a Baron during the Coverture can't retain a Chaplain, yet when a Baroness Widow retains one or two according to the faid Proviso, this Retainer according to the Act is the principal Matter; and as long as the Retainer is in Force, and the Baroness confices by the express Letter of the Act, for it is sufficient if at the Time of the Retainer the Baroness was a Widow, for thereby the express Words (being Widow) are satisfied: But the Statute doth not provide that she shall be Widow at the Time of the Acceptance, but the Words imply the Contrary, f. that she need not continue Widow; for the Words are, Every Baroness being Widow may have two Chaplains, whereof every of them may purchase, &c. so by these Words it is sufficient, if she be a Widow at the Time of the Retainer, and the Power to purchase Licence is annex'd to the Retainer, and there is no Mischief in this Case, for the Number appointed by the Statute shall not be exceeded, and the Act appoints the Baroness Widow to have two, and her Husband to have three, so that the Intention of the Act is not defrauded; And altho' (as it has been faid) the Husband and Wife are but one Person in Law, yet as the Text saith, Sunt anima dua in carne una, and therefore there is no Reason, that the Retainer of Chaplains which serve for the Instruction of Souls should be determined by the Marriage. Also the last Proviso, When a Baroness marries one under the Degree of a Baron, was added, because by fuch Marriage her Dignity was determined, for the Rule is, Quando (c) mulier nobilis nupserit ignobili, definit esse nobilis. But this Rule is to be understood of a Woman who attains Nobility by Marriage, as by the Marriage of a Duke, Earl or Baron, &c. for in such Cases if the afterwards marries under the Degree of Nobility, by fuch Marriage with one who is ignoble she loses her Dignity which she had attained by Marriage with one of Nobility; for (d) codem modo quo quid constituitur, diffolvitur: but if a Woman is Noble, as Dutchess, Countess, Baroness, &c. by Descent, altho' she marries with one under the Degree of Nobility, yet her Birthright remains, for that is annex'd to her Blood, and eft Character indelebilis : but in the Case at Bar the Baron by her Marriage with one of Nobil' doth not lose her Dignity of Baron' but potius augments it. And theref. it's not like any

(c) 2 Inft. 50. 6 Co. 53. b. Owen 81. Br. Nofme de Dignity 69. Cawly

(d) Cawly 247. 2 Bulftr. 284. 2 Roll. Rep. 39. 6 Co. 53. b. 8

Cases which have been put, and the second Proviso explains it, for the Makers of the Act well knew, that afterwards by such Marriage as this is in the Case at Bar, she is a Baroness as the was before, and not in Case as where the marries with one under the Degree of Nobility: To this was added, that the second Proviso doth not provide Remedy when a Baroness Widow retains two Chaplains, and afterwards marries with one under her Degree, but that is left to the general Construction of Law, and provides only that such Baroness after such Marriage may retain two Chaplains, &c. Also when a Baroness Widow retains two Chaplains, and afterwards marries with a Baron, by common Intendment the brings Living and Maintenance with her to support her State, and prefer her Chaplains, and the retaining of her Chaplains can't be a Prejudice to her Hufband but points an Honour to him. If a Woman Baroness Widow retains two Chaplains according to the Statute, and afterwards takes one of the Nobility to Husband, and afterwards the Husband dies, the Retainer of these two Chaplains remains; and they without a new Retainer may take two Benefices; for their Retainer was not determin'd by fuch Marriage; Also for the same Cause so long as they attend upon fuch Baroness in her House, they shall not be in Danger of Non-residence. And it is to be known, That if Cro. Car. 146. a Baron has three Chaplains, and each of them has two Benefices, and afterwards the Baron dies, yet they shall enjoy the Benefices with Cure which were lawfully fettled in them before; but altho' he dwells and is resident upon one Benefice, yet he shall be punished for Non-residence upon the other, as 'twas adjudg'd in Parson Boyton's Case, and therefore he ought to obtain of the King a Non obstante. So if the Baron is attainted of Treason or Felony, or if any Officer is removed from his Office, & fic de similibus. Pasch. 44 Eliz, in a Quare impedit brought by the Queen against the Bishop of Salisbury and others, it was ruled per totam Curiam, that the Earl of Southampton being of the Age of 10 Years, and dwelling in the House with the Lord Admiral to whom the Queen had granted his Wardship, might retain and qualifie Chaplains within this Act; for the Words of the Act are general, and yet his Guardian was a Nobleman, and had Chaplains by the faid Act allowed him, and the Earl of Southampton was under his Custody, and one of his Family, as the Wife was in the Cafe at Bar.

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## Hill. 45 ELIZABETHE. In the King's Bench.

Doed Griffith or Pritchard & Bette 165.

#### DUMPOR's Case.

Co. Ent. 684. pl. 33. Cro. El. 815. 826.

IN Trespass between Dumper and Symms, upon the general lifue, the Jurors gave a special Verdiet to this Effeet; The Prefident and Scholars of the College of Corbus Christi in Oxford made a Lease for Years in anno to El. of the Land now in Question to one Bolde, Proviso that the Lessee or his Affignees should not alien the Premises to any Person or Persons without the special Licence of the Leffors. And afterwards the Leffors by their Deed anno 13 El. licensed the Lessee to alien, or demise the Land, or any Part of it to any Person or Persons quibuscunque. And afterwards anne 14 Eliz. the Lessee assigned the Term to one Tubbe, who by his last Will devis'd it to his Son, and by the same Will made his Son Executor and died. The Son entred generally, and the Testator was not indebted to any Person, and afterwards the Son died intestate, and the Ordinary committed Administration to one who assigned the Term to the Def. The Prefident and Scholars by Warrant of Attorney entred for the Condition broken, and made a Leafe to the Pl. for 21 Years, who entred upon the Def. who re-entred, upon which Re-entry this Action of Trespass was brought, And that upon the Lease made to Bolde the yearly Rent of 33 1. 4 d. was referved, and upon the Leafe to the Pl. the yearly Rent of 22 s. was only referred. And the Jurors prayed upon all this Matter the Advice and Discretion of the Court, and upon this Verdict Judgment was given against the Pl. And in this Case divers Points were debated and resolved. 1. That the Alienation by Licence to Tubbe had (a) determin'd the Condit. fo that no Alienat: which he might afterw. make could break the Proviso, or give Cause of Entry to the Lessors, for the Lessors could not dispense with an Alienation for one time, and that the same

(a) 1 Rol. Rep. 50, 190. 1 Rol. 423,471. 2 Bulfb 591. Cro. Jac. Eftate shou'd remain subject to the Proviso afrer. And althe the Proviso be that the Lessee or his Assignees shall nor alien, yet when the Leffors licence the Leffee to alien, they shall never defeat by Force of the said Proviso the Term which is absolutely aliened by their Licence, in as much as the Affignee has the fame Term which was affigned by their Affent; So if the Lesfors dispense with one Alienation, they thereby dispense with all Alienations after; for in as much as by Force of the Lessor's Licence and of the Lessee's Assignment, the Estate and Interest of Tubbe was absolute, it is not possible that his Assignee who has his Estate and Interest, shall be subject to the first Condition: And as the Dispensation of one Alienation is the Dispensation of all other, so it is as to the Persons, for if the Lessors dispense with one, all the others are at Liberty. And therefore it was adjudged Trin. 28 Eliz. Rot. 255. in Com Banco inter Leeds (a) & Crompton, that where the Ld. (1) 1 Rol. 472.

Stafford made a Lease to three upon Condition that they Cro. El. 816.

or any of them should not alien without the Assent of the 32 4 Leon-18. Lessor, and afterwards one aliened by his Assent, and af- 2 Bulltr. 291. terwards the other two aliened without Licence, and it was adjudged that in this Case the Condition being determined as to one Person (by the Licence of the Lessor) was determined in all. And (b) Popham Chief Justice denied (b) Styles 319, the Case in 16 Eliz. Dyer (c) 334. That if a Man leases (c) Dyer 334. The Land upon Condition that he shall not alien the Land, or Styles 314. any Part of it without the Affent of the Leffor, and after- Moor 203. wards he aliens Part with the Affent of the Leffor, that he can't alien the Residue without the Assent of the Lessor: And (4) Co. Lk. conceived, that is not Law, for he faid the Condition could 215, 2not be divided or (d) apportioned by the Act of the Parties. and in the same Case, as to parcel which was aliened by the Affent of the Leffor, the Condition is determined; For altho' the Lessee aliens any Part of the Residue, the Lesser shall not enter into the Part aliened by Licence, and therefore the Condition being determined in Part, is determined in all. And therefore the Chief Justice said, he thought the faid Case was false printed, for he held clear that it was not Law. Note Render, Pasche 14 Eliz. Ret. 1015. in Com' (2) Discrete. Banco, That where the Lease was made by Deed indented for 300. pl. 75. 21 Years of three (c) Manors, A. B. C. rendring Rent, for Moor 97, 98, A. 6 l. for B. 5 l. for C. 10 l. to be paid in a Place out of the Land, with a Condition of Re-entry into all the three Manors for Default of Payment of the faid Rents, or any of them; and afterwards the Lessor by Deed indented and inrolled bargained and fold the Reversion of one House and 40 Aeres of Land Parcel of the Manor of A. to one and his Heirs, and afterwards by another Deed indented and inrolled, bargained and fold all the Residue to another and his Heirs; and if the second Bargainee should enter for the Condition broken or not, was the Question; And it was

DUMPOR'S Cafe. PARTIV

(6) 3 Bulftr. 1545 Co. Lit. 215. 2.

(c) I Rol. Rep. 331. Co. Lit.

(d) : Rol. Rep. 331. Moor 203.

(e) Dyer 152. pl. 7. Co. Lit. 2. Cro. El. 757, 816.

(a) Co. Lit. adjudged, that he should not enter for the (a) Condition 350. 5 Co. 55. b. broken, because the Condition being entire could not be apadjudged, that he should not enter for the (a) Condition portioned by the Act of the Parties, but by the Severance of Part of the Reversion is destroyed in all. But it was agreed, that a Condition may be (b) apportioned in two Cafes. 1. By Act in Law. 2. By Act and Wrong of the Leffee. By Act in Law, as if a Man feifed of two Acres, the one in Fee, and t'other in (c) Borough English, has Isfue two Sons, and leafes both Acres for Life or Years rendring Rent with Condition, the Lessor dies, in this Case by this Descent, which is an Act in Law, the Reversion, Rent and Condition are divided. 2. By Act and Wrong of the Lessee, as if the Lessee makes a Feoffment of Part, or commits Waste (d) in Part, and the Lessor enters for the Forfeiture, or recovers the Place wasted, there the Rent and Condition shall be apportioned, for none shall take Advantage of his own Wrong, and the Lessor shall not be prejudiced by the Wrong of the Leffee: And the Lord Dyer then Chief Justice of the Common Pleas in the same Case faid, that he who enters for a Condition broken ought to be in of the same Estate which he had at the Time of the Condition created, and that he can't have, when he has departed with the Reversion of Past: And with that Reafon agrees Litt. 80. b. And vide 4 & 5 Ph. & Mar. Dyer (e) 152. where a Proviso in an Indenture of Lease was, that the Lessee, his Executors or Assigns should not alien to any Person without Licence of the Lessor, but only to one of the Sons of the Lessee; the Lessee died, his Executors affigned it over to one of his Sons, It is held by Stamford and Catlyn that the Son might alien to whom he pleased without Licence, for the Condition as to the Son was determined, which agrees with the Resolution of the princi-pal Point in the Case at Bar. 2. It was resolv'd, that the Statutes of 13 Eliz. cap. 10. & 18 Eliz. cap. 11. concerning (f) Antea 76. 2. Leases made by Deans and Chapters, Colleges and other 2 Rol. 465. Yelv. Ecclefiastical Persons are (f) general Laws whereof the 337, 338. Nov. Court ought to take Knowledge, altho' they are not found 208. Cro. El. by the Jurors, and so was it resolved between Claypole and 816. Moor 593. Carter in a Writ of Error in the King's Bench. Court ought to take Knowledge, altho' they are not found by the Jurors, and so was it resolved between Claypole and Carter in a Writ of Error in the King's Bench.

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I Lcon. 306,307.

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### Pasch. I Regis JACOBI.

#### BUSTARD's Cafe.

Ich. 44 Eliz. in the King's Bench in Trespass, be- (a) Cr. El. 903, tween Buftard Plaintiff and Boulter Defendant, the Moor 665. Case was such; Jasper Dormer and Justine his Wife were seised of the Moiety of the Manor of Ilbury to them and to the Heirs of the Body of Jasper; Jasper levied a Fine thereof to one Gregory, who suffer'd a common Recovery, in which Jasper was only vouched, and he vouched over the common Vouchee, and it was to the Use of Gregory and his Heirs, who thereof enfeoffed Buffard, who thereof enfeoffed Savage and Darfton in Fee; and afterwards an Exchange was made by Deed indented between Savage and Darfton of the one Part, and Buffard (who was feifed in Fee of the fourth Part of the Manor of Barton) in the County of Oxford, by which Exchange Buffard gave the faid Savage and Darfton and their \* Heirs the faid 4 Part of \* Co. Lit. 10. 2. the Manor of Barton in Exchange for the Moiety of the Manor of Ilbury, which Moiety Savage and Darfton gave Buffard and his \* Heirs in Exchange for the faid fourth Part of the Manor of Barton; which Exchange was executed on both Parties: Savage and Darfton demised the fourth Part of the Manor of Barton to the Def. for Years, Jasper died, Juffine his Wife entred into the Manor of Ilbury, upon which Bu-flard entred into the fourth Part of the Manor of Barton; the Def. re-entred, and Buffard brought an Action of Trefpass. And after many Arguments at the Bar and Bench in divers several Terms, it was adjudged for the Pl. and in this Case four Points were resolv'd per totam Curiam. I. That in every Exchange lawfully made, this Word (b) Ex-(b) Co.Lit. 50.b. cambium implies in itself tacite a Condit. and also a Warran-253. 9 E. 4.21.b. ty, th' one to give Re-entry, and the other Voucher and Re-1 Rol. 814. comp. and all in Respect of the reciprocal Considerat. th' one F. N. B. 155. b. Land being given in Exchange for the other; But (c) it is a Perk. Sect. 261. special Warranty, for upon the Voucher by Force of it he shall 45 E. 3. 20. b. not recover other Land in Value, but that only which (c) Co. Lit. 384. R (a) Co. Lit. 384. b. 174. 2 (6) Co. Lit. 384. b.

(a) Perk. Sea.

Co. Lit. 173. b. 174 2. 4 H. 7. 6. 2. b.

z Co. 86, b.

Yelv. 8. Co. Lit. 174. 2. \* Co. Lit. 174. 2. 173. b.

Lit ,Sca. 262.

was given in Exchange; for in as much as the mutual Confideration is the Cause of the Warrantry, it shall therefore extend only to Land reciprocally given, and not to other Land: And this Warrant runs only in Privity, for none shall (a) youch by Force of it but the Parties to the Exchange, or their Heirs, and no Assignee; but the Assignee shall (b) rebut by Force of it, altho' the Exchange was without Deed, as appears 3 E. 3 Formedon 44. 2 E. 2. Cui
\* Co. Lit. 173. b. in vita 17. \* The fame Law in Case of Partition: And as 274. 3. 384. 2. b. it is in Case of Warranty, so it is in Case of Condition, which the Law implies upon the Exchange: And therefore if A. exchanges with B. and B. aliens to C. who is evicted by Title Paramount, C. shall not enter upon the other, for as the Warranty runs in Privity to the Parties to the Exchange and their Heirs, so also the Condition in Law runs also in Privity, and doth not extend to the Assignee,
(c) 9 Co. 34.2.b. and so none (c) shall have Contra formam feoffamenti but the
2 lnst. 113.

Ecosses or his Heira but the Beoffee or his Heirs, but the Affignee may rebut; vide F.N.B. (d) Perk. Sed. 163. c. 22 H.6. 50. b. 30 H.6. 7. a. 10 H. 7. 11. (d) 286, 287. 15 E.4. Rut in the fame Case, if A. who did not alien is evicted, 10 H. 7. 11. (d) Er. Exchange 12. he shall re-enter into the Land which he gave in Exchange, altho' B. has aliened it over. 2. It was refolv'd, if A. gives in Exchange three Acres to B. for other three Acres, and af-

terwards one Acre is evicted from B. in that Case the whole Exchange is defeated, and B. may enter into all his Land; for altho the Exchange had been good if A. had given but two Acres, or but one Acre or less, yet for as much as all the three Acres were given in Exchange for the others, and the Condition, which was implied in the Exchange, was entire, upon the Eviction of one Acre the Condition in Law was broken, and therefore Entry given into the whole, for it is the Office of the Condition to defeat the whole and not any Parcel, unless the Condition is especially restrained to one Part only as it is not in this Case; And therefore there is not any Difference between a Thing entire as a Manor, and Things several given in Exchange: The same Law of a Partition, as it is also agreed in 13 E. 4. 3. 0 42 Aff. 22. the Earl of Pembroke's Cafe, where the principal Case of the Partition is good Law, but the O-

flate for Life or in Tail is evicted against one Coparcener, that yet the Partition shall remain in Force, \* is not Law, as it was resolved by the Court in this very Case, Vide Littleton cap, parceners 58 b. But in the faid Case of the Exchange, if one is impleaded for one Acre, and he vouches the other, and the Demandant recovers, in that

pinion of Cavendish there, that is to say, That altho' an E-

Case the Tenant shall recover in Value but according to the Loss: For altho the Condit, is entire and extends to all, yet the Warrantry upon the Exchange may severally extend

to Part; and there is great Difference between Warranty in Co. Lit. 174 1. Law upon Exchange, and Warranty in Law upon Partition, 284 a. as to Recovery in Value; for in Case of Exchange, he who vouches thall recover in Value according to the Value which he loft, but so it is not in the Case of Partition: For if a Man is feifed of 6 Acres in Fee, every one of equal annual Value, and dies, having Issue two Daughters, and upon Partition each has three Acres, and afterwards one Sister is impleaded for I Acre by one who has Title paramount, and prays in Aid of her Coparcener, she shall not recover an Acre, but half an Acre, so that each of them shall have an equal Part; for inafmuch as both claim by Descent, which is an Act in Law, and by the Law each of them ought to have an equal Part of the Inheritance of her Ancestor, for this Cause she shall recover in Value but the Moiety which the loft, so that the Loss shall be equal. So if a Man is seised in Fee or in Tail of 3 Acres, each of equal yearly Value, and dies, the Heir endows the Wife of the third Acre, and afterwards the Wife is impleaded by one who has Title paramount, and the vouches the Heir; now the shall not recover in Value according to that which she loft, but the 3 Part of the 2 Acres which remain, for by the Law she ought to have in Dower the 3 Part, and now upon the Matter the is to have in Dower but the 3 Part of the 2 Acres, as appears by the Book in 5 E. 3. Voucher 249. where Co. Lit. 31. 2.

the principal Case was, Rob. de Paris Great Grandfather, Stephen de Paris Grandfather, Ro. de Paris Father, and Ro. de Paris the Son; Ro. the G. Grandfather having to Wife Mand feifed of certain Land in Fee, gave it to Stephen and the Heirs of his Body, who died; Ro. the Son of St. endow'd Margery the Wife of St. of the 3 Part of the whole, and afterwards Ro. the Great Grandf. dy'd, and Ro. the Father died, Mand late the Wife of the Gr. Grandf. brought a Writ of Dower against Marg. Wifeof St. and she vouch'd Ro. the Son of Ro. who had the Reverfion, and there the Question was, of how much Margery should have in Value? And by some, the shall only have Dower, having Regard to the two Parts which remain, because the Dower which Maud the Wife of the Gr. Grandf. demanded, is higher and elder than the Dower of Margery the Wife of the Grandf. And notwithstanding the Gr. Grandf. surviv'd Stethen, and the Wife of St. in the Life of Rob. the Gr. Grandf. was lawfully endow'd, at which Time Maud could demand nothing, yet when her Husband dy'd, her Title of Dower is more worthy. And some held the contrary, f. That the Wife thould recover in Value according to her Loss; and a Diffe- Co. Lit. 31. 2. b. rence was taken between Dower of the Wife of an Heir and of the Wife of a Purchasor; for if there be Grandfather, Father, and Son, and the Grandf. dies, and afterwards the Father dies, and the Son endows the Wife of the Father, a-

gainst whom the Wife of the Grandfather brings Dower,

the shall not recover over in Value, because the Dower of the Wife of the Grandf. toll'd in Law the Descent as to the Freehold and the shall be in of the Estate of her Husband, and per consequens after the Death of the Wife of the Grandf. the Wife of the Father shall not be endow'd of the Part affign'd to the Grandmother for her Dower, for now in Judgment of Law the Father had but a Reversion of that Part expectant upon an Estate for Life, & ideo, Dos de dote peti non debet. But in that Case the Gr. Grands. made a Gift in Tail to Stephen, so that Maud demanded Dower against Margery, who was the Wife of a Purchasor, and altho' Maud recover'd Dower a-gainst Margery, yet if Margery surviv'd her, she should reenter; for Dower toll'd the Estate which by Law descended. but not the Estate acquir'd and gain'd by Purchase, and so was it adjudg'd, and there Margery recover'd generally to the Value which fhe loft: So in Case of Exchange, each Party is a feveral Purchasor, and each warrants the whole to the other, and therefore he shall recover to the Value which he loses.3.It was refolv'd, that as when the whole Estate in part is evicted, the whole Exchange is defeated; So in the principal Case, when the Estate of Freehold for the Life of Justine, which is but Parcel of the Estate is evicted in all the Lands, or in Part, by that the whole Exchange may be defeated by Force of the Condition in Law, for altho' a Reversion expectant upon an Estate for Life may be given in Exchange for Land in Posfession, yet when Savage and Darston in the principal Case were feifed of the Moiety of the said Manor of Ilbury in their Demesn as of Fee, and gave it in Possession to Bustard in Exchange, ut supra, when Justine entred and evicted an Estate for Life, Buffard might enter into the whole Land which he gave in Exchange, for the whole Estate which was given to him was the Consideration that he departed with his Land, and therefore when any Estate of Freehold is evicted from him by Entry or otherwise, he may by Force of the Condition in Law enter into the Land given by him: So if he in Reversion in Fee disseises his Lessee for Life, and gives this Land in Exchange to another for other Land, and afterwards the Leffee for Life enters, now may the other enter into his Land, because the whole Exchange is defeated; but if A. has the Reversion in Fee of an Acre of Land expectant upon an Estate for Life, makes an Exchange with B. by Deed indented, and gives this Acre by the Name of an Acre of Land, and not by the Name of the Reversion in Exchange for another Acre; in this Case altho' B. expects to have the Acre so given him, in Possession, yet in this Case (forasmuch as nothing past by the Gift of the Acre of Land but the Reversion) the Warranty or the Condition can't by the Law extend to more than past by the Exchange, for they are incident and annexed to the Estate which is given, and can't extend to the Freehold which

was in the Lessee; and if the Law should be otherwise, great

Co. Lit. 31. b.

Co. Lit. 174. 2. Yelv. 8. 1 Roll. 815.

2 Roll. 813.

Co. Lit. 174. 2. Ct. El. 902.

Mischief would ensue, for if Exchange is made of divers Manors, and peradventure divers Parcels of them are in Lease for Life, in this Case, if the Exchange should be void because it was made as of a Manor in Possession, it would avoid all fuch Exchanges, which would be mischievous, and there can be no Mischief on the other Part : for when the Tenants for Life are in Possession of the Land, it shall be accounted the Lachess and Folly of the Purchasor, if he did not know it either by Survey or other Intelligence. But in the principal Case, by the Fine and Recovery, and other Estates made, the Estate which Justine had was divested, and she had but a Right, so that Savage and Darston who gave it in Exchange had an Estate in Fee Simple in Possession, to which the Warranty and Condition in Law upon the Exchange, was annex'd. 4. It was refolv'd, that altho' Buffard had Notice of the Right of Justine at the Time of the Exchange, yet it was not material, but that afterwards by her Entry the Exchange shall be defeated, for peradventure it was one of the Causes that he would not purchase Ilbury abfolutely, but by way of Exchange, fo that upon Eviction he shall have his own Land again: And Coke the Attorney-General, and Tanfield and Dafton were of Council with the Defendant, and Godfrey, Telverton and others with the Plain-

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# Paschæ 1 Regis Jacobi. In the King's Bench.

#### Beverley's Case of Non compos mentis.

Na Bill depending in the Court of Requests between Snow Plaintiff, and Beverley Defendant, the Matter was; That Snow had made a Bond to the Defendant in 1000 l. and in the faid Court would be relieved, because at the Time of the making of the said Bond, he was Non compos mentis; and this Term I mov'd the Court of King's Bench to have a Prohibition to stay the said Suit in the Court of Requests, because the Matter was not determinable there. And upon this Case two Points upon Argument and good Confideration were unanimously resolv'd per totam Curiam, 1. That every Deed, Feoffment, or Grant which any Man Non compos mentis makes is avoidable, and yet shall not be avoided by himself, because it is a Maxim in Law, that no Man of full Age shall be in any Plea to be pleaded by him, receiv'd by the Law to (a) stultify himself, and disable his own Person, as appears by Littleton, lib. 2. cap. Discents fol. 95. and therewith agree 39 H. 6. 42. b. 5 E. 3. 70. 6 35 Aff. 10. And there another Cause is given, f. because when he recovers his Memory, he can't know what he did when he was Non compas mentis. If the Common Law had given a Writ of Non compos mentis to him who has recover'd his Memory after Alienation, certainly the Law would have given him Remedy for the Maintenance of himself, his Wife, Children and Family, altho' he recover'd not his Memory, but continu'd Non compos mentis. And it must be known, That this Disability to disable himself as to some Persons is personal, and extends only to the Party himself, and as to other Persons is not personal, but shall bind them also: And as to that know that there are 4 Manner of (b) Privities, f. Privit. in Blood, as Heir: 2. Privity in Representation, as Executors

(a) Jenk. Cent. 40 F. N. B. 202. D.

1 Roll. 2.

Br. Faits 62.

Fitz. Iffue 53.

Cr. El. 398, 622.

Godb. 302.

Co. Lit. 247, 2.b.

Br. Dum fuit inf.

atarem 3.

Br. Entre congeable 47.

Lit. 95, 2, b.

Lit. Sect. 405.

(6) 3 Co. 22. 2. F Co. 42. b. Co. Lit. 271. 2. I Jones 32. Inft. 516, 51%

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or Administrators, who as Littleton faith fol. 77. b. represent the (a) Person of the Testator or Intestate, 2 Mar. Dyer 112. (a) Lit Sect. 337. agrees. 3. Privity in Estate, as Donee in Tail, the Rever- Co. Lit. 208. b. sion or Remainder in Fee, Oc. 4. Privity in Tenure, as Lord by Escheat: And two of them which are Privies only may disable him who was Non comp' men', and thall avoid his Deeds, Grants or Feoffments, and 2 not. For Privies in Blood may shew the Disability of the Ancestor, and Privies in Representation the Infirmity of the Testatot or Intestate; but neither Privy in (b) Estate, nor Privy in Tenure shall (b) 8 Co. 43. 2. do it: And therefore if Donee in Tail being Non comp mentis 1 Rolls Rep. 401, makes a Feossment in Fee, and dies without Issue, he in Re- 2 Inst. 483. version or Remainder shall not enter or take Advantage of the Disability of the Donee: The same Law of Lord by Escheat, if his Tenant being Non comp' men' makes a Feoffment in Fee, and dies withour Heir, he shall not avoid it: But there are some Acts done by a Man Non comp' men' which none of them shall avoid, and therefore if he levies a Fine, or suf-fers a Recovery, (c) or acknowledges a Statute or Recogni- (c) Br. Fines lev. fance, neither his Heirs nor his Executor shall avoid it, for &c.75. 2Inst. 483, these are Matters of Record which shall not be avoided by a Cr. El. 187. bare Averment of Non comp' men' for the Inconvenience which Co. Lin. 247. 3. may thence enfue; Also such Averment is against the Office and Dignity of the Judge, for he ought not to take any Conufans of a Fine or Recognifiance of him who is Non comp' men' 18 E. 2. Fines 120, 17 Aff. 17. 17 E. 3. \_\_\_\_ 1 Mar. Tit. Dum fuit inf, etat' 7. 31 E. 3. Saver Default 57. 2. It was refolv'd, that it being against an express Maxim of the Common Law, (d) Jenk Cent, 40, that the Party shall not (d) disable himself, that he shall not Cr. El. 398, 622. have for it Relief in any Court of (e) Equity, for that would F. N. B. 202. d. have for it Relief in any Court of (e) Equity, for that would I Rolls 2. be in Subversion of a Principal and Ground in Law, 9d'nota. Br. Faits 62. And Coke the K's Attorney was of Counsel with Beverley, and Godb. 302.

Herle the King's Serjeant with Snow. Nota Reader, that every Co. Lit. 247.2.b.,

Br. Dum fuit in-Act which a Man Non compos doth, either concerns his Life, fra et at. 3. his Lands, or his Goods; Also every Act which he doth is Breakle at either in pais, or in a Court of Record: All Acts which he Lit. Sect. 405. doth in a Court of Record, either concerning his Lands or Lit. 95. 4. by Goods shall bind himself, and all others for ever; All Acts (1)2Rol. Rep. 219 (2)2Rol. Rep. 349 which he doth concerning his Lands or his Goods in pais, in Hob. 134.

fome Case shall bind himself only during his Life, and in 2 Rol. Rep. 324.

some Case shall bind for ever (as has been said.) But as to Co. Lit. 247. b. 21 H. 7. 31. b. his (f) Life, the Law of England is, that he shall not lose his Br. Corone 62.

Life for Felony or Murder, because the Punishment of Stams. Cor. 16. b. Fitz. Cor. 351.

a Felon is so grievous, s. 1. To lose his Life. 2. To lose 412, 414.

his Life in such odious Manner, s. by hanging, for he shall Went. 302.

be hanged between Heaven and Earth as unworthy of (3) Co. Lit. 41.2.

both. 3. He shall lose his Blood as to his Ancestry (for 1 Rol. Rep. 186.

be hanged between Heaven and Earth as unworthy of 1 Rol. Rep. 186.

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his Posterity also, for his Blood is corrupt, and he has neither Heir nor Posterity. 4. His Lands. 5. His Goods; and in such Case the King shall have Annum, diem, & vastum, to the Intent that his Wife and Children shall be ejected, his Houses pulled down, his Trees eradicated, and subverted. (4) Co.Lit. 294.b his Meadows (4) plough'd, and all that he has for his Comfort, Delight, or Sustenance, wasted and destroy'd, because he

(6) 3 Inft. 4, 6.

(c) Plow. 19. 2. Hob. 134. 2 Rolls 547.

has in fuch felonious Manner offended against the Law; and all this was, Ut (b) pana ad paucos metus ad omnes perveniat: But the Punishment of a Man who is depriv'd of Reason and Understanding can't be an Example to others, 2. No Felony or Murder can be committed without (c) a felonious Intent and Purpole ; Et ideo diet' eft felonia, quia fieri deb' felleo animo: But Furiosus non intelligit quid agit, & animo & ratione carct, & non multum diftat a brutis, as Bracton saith, and therefore he can't have a felonious Intent, Vide 21 H. 7. 31. 26 Aff. 27. F. N. B. 202. D. Stamf. Pl. Coron. 16. b. Alfo for the same Reason, Non compos mentis can't commit Petit Treason, as if a Woman Non compos mentis kills her Husband, as appears 12 H. 3. Forfeiture 33. But in some Cases Non compos mentis may commit High (d) Treason, as if he kills, or offers to kill the King, it is High Treason, for the King eft caput O falus Reipublica, & a capite bona valetudo transit in om-

(d) 2 Rolls R-324 Dalt. Just. 330. Halespl. Cor. 10. 3 Inst. 6. 4 Godb. 316.

\* Co. Lit. 247. 2

nes; and for this Reason their Persons are so sacred, that none can offer them any Violence, but he is Reus criminis lasa Majestatis, & pereat unus ne pereant omnes. And it must be known, That there are 4 \* Manner of Non compos mentis: 1. Ideot or Fool natural: 2. He who was of good and found Memory and by the Visitation of God has lost it: 3. Lunaticus, quigaudet lucidis intervallis, and fometimes is of good and found Memory, and fometimes Non compos mentis: 4. By his own Act, as a Drunkard; and it has been faid, that there is great Difference between an Ideot a nativitate, and he who was of found Memory, and becomes by the Visitation of God, of unfound Memory; for an Ideot is known by his perpetual infirmity of Nature a nativitate, for he never had any Sense or Understanding to contract with any Man, but he who was of good Memory and Understanding and able to make a Contract, and afterwards becomes by Infirmity or Casualty of unsound Memory, is not so well known to the (e) Co.Lic.135.b. against him shall appear in proper (e) Person, and he who F. N. B. 9, 27. pleads best for him shall be admitted, as appear in Start of the control of the World as an Ideot natural. Also an Ideot in an Action brought 18. b. Otherwise it is of him who becomes Non composment tis, for he shall appear by Guardian if he is within Age, and by Attorney if he is of full Age, but yet as to Estates or Gifts made by them, they themfelves by any Plea that they can plead shall not avoid them, no loss the Ideot than he who

Stamf. Prarog.

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who becomes of unfound Memory; and be the Feoffment or Gift made by them in Person or by Attorney, they themselves shall never avoid it either by Entry or by Action; for it appears by the faid Maxim, that they can't stultify (a) or (a) Jenk. Cent.40 disable themselves: But if they shall avoid Things which Cr. El. 398,622. they do by Attorny, they themselves ought to shew that they F. N. B. 202. d. they do by Attorny, they themselves ought to shew that they F. N. B. 202. d. Roll. 2. Antes were then Ideots, or of unfound Memory: But yet as to 123.b. Br.Fairson's others, there is a great Difference between an Estate made Firz. Issue 53. Godb. 302. in Person and by Attorney; for if an Ideot or Non compos Co. Lit. 247.a.b. mentis makes a Feoffment in Fee in Person, and dies, his Heir Br. Dum suit inwithin Age, he shall not be in ward, or if he dies without Br. Entry con-Heir, the Land shall not escheat as is aforesaid: But if the Lic. Sect. 405.

Feoffment is made (b) by Letter of Attorney, altho' the Lic. 95. 2. b.

Feoffor shall never avoid it, yet after his Death as to all Br. Feoffments. others in Judgment of Law the Estate was void, and therefore in such Case if his Heir is within Age he shall be in ward, or if he dies without Heir the Land shall escheat, and that is the true Reason of the Books in 7 H. 4. 5. b. 67 H. 4. 12, And like the Case of an (c) Infant, if he makes a Feoff-(c) 8 Co. 42. b. ment in Person, if he dies without Heir the Land shall not 7 Co. 7. b. Inst. 483. escheat, but otherwise if it was made by Letter of Attorney, Dy. 10. pl. 38. but the Infant himself shall avoid it, but so shall not the 49 E 3. 13. 2. others; but Acts done by Matter of Record, as Fines, \* Re-7 H. 5. 9. b. coveries, Judgments, Statutes, Recognizances, &c., shall bind Bulftr. 272. as well the Ideot, as he who becomes Non compos mentis, Cr. El. 187.
(d) 31 E. 3. Saver default 37. 1 Mar. Dum fuit infra atatem Perk. Sect. 24. Also of a Lunatick, all Acts which he doth during his 2 Inft. 483. Lunacy are equivalent to Acts done by an Ideot, or he who &c. 75. 12 Co. is utterly Non compos mentis; but Acts done by him inter lu-123, 124. cida intervalla, when he is of found Memory thall bind him. Lastly, altho' he who is (e) drunk, is for the Time Non com-(e) Co.Lic. 247.2 pos mentis, yet his Drunkenness does not extenuate his Act, Plow. 19.2. or Offence, nor turn to his Avail, but it is a great Offence in itself, and therefore aggravates his Offence, and doth not derogate from the Act which he did during that Time, and that as well touching his Life, his Lands, his Goods, or any In Case other Thing that concerns him: When and in what Cases Laches shall prejudice an Ideot or Non compos mentis, some have taken a Difference between a Bar of his Right, and a Bar of his Entry, for in Case of Bar of his Right, his Lachess shall not prejudice him, but in such special Case if he becomes of unfound Memory, he shall shew that he was Non compos mentis; as if a Man Non compos mentis is diffeifed, and the Diffeisor levies a Fine, in this Case at the Common Law, altho' the Year and Day are past, yet he who was Non compos mentis shall not be thereby bound, but he may well enter, and that they fay is proved by the Statute de modo (f) levandi fines, made anno 18 E. I. which is but a (f) Co.Li.26.2.b. Declaration of the Common Law, f. that a Fine is fo high b. Plow. 359.b.

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a Bar, and of fo great Force, and of to flrong a Nature in its felf, that it bars not only those who are Parties and Privies to the Fine and their Heirs, but all other People of the World who are of full Age, out of Prison, and of good Memory, and within the four Seas the Day of the Fine levy d, if they put not in their Claim by their Action or Entry in the Country within the Year and the Day, by which it appears, that no Lachels of a Man Non comby the Statute of 4 H. 7. cap. 24. that in fuch Cafe, if a Man levies a Fine with Proclamations, and at the Time of the Fine levy'd he who has Right is Non compos mentis, and afterwards he recovers his Memory, in this Cafe he ought to pursue his Action or make his Entry within 5 Years, after he becomes of found Memory, and in fuch Cafe in pleading he shall shew that at the Time of the Fine levied, he was Non compos mentis, and all the special Matter; but if he who has fuch Right, is an Ideot, or Non compos mentis, and never recovers his Memory, the Heir may have his Action, or make his Entry when he will, for he is excepted out of the Body of the Act, and is not bound to make any Entry, or bring his Action within any Time, but the Party himself if he recovers his Memory. The same Law if he who is beyond Sea at the Time of the Fine levied and dies, there his Heir may enter or bring his Action when he will, and in fuch Cafe the Lord by Escheat shall take Advantage Non compos mentis, Infancy, Imprisonment, or being beyond Sea, of his Tenant: For if there are Lord and Tenant, and the Tenant is differfed, and the Differfor levies a Fine, the Diffeisee being then within Age, or Non compos mentis, or in Prison, or beyond Sea, and afterwhrds the Diffeisor takes back an Effate to himfelf in Fee, and afterwards the Diffeifee within Age, or Non compos ments, or beyond Sea, or in Prison, dies without Heir, the Lord by Escheat shall take Advantage of every of them against his Diffeifor. So if a collateral Warranty descends upon one Non compos mentis, which he might have avoided by Entry: But an Ideot or Non compos mentis by their Laches shall be barr'd of their Entry, and therefore if they are differfed, and the Diffeisor dies seised, it shall toll their Entry, but after their Death their Heir may enter, and take Advantage of the Infirmity of their Ancestor, and his Laches which shall prejudice himself shall not prejudice his Heir of his Entry, and all this appears by Littleton lib. 3. c. Descents fol. 95. For Littleton faith, No Laches can be adjudg'd by the Law in him who has no Discretion imfuch Case, J. having Regard to his Heir, and so is the Difference. As to that which is commonly objected, that the Civil Law in this Point is grounded upon greater Reason than the Common Law, for by the Civil Law all Acts which Ideots or Non comp' mentis do w thout their Tutor are utterly void, and this feems to some more reasonable than the Com, Law, because he who is an Ideot

2 Inft. 520. Plowd. 366. 2

Lit. Sed. 405.

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Non compos mentis wants Diferetion and Understanding that comes by the Act and Vilitation of God; therefore fey (God forbid) that his Acts or Laches during that ine thould bind him: Others conceive that the ancient bramon Law agrees with the Civil Law in this Case; for walton lib. 3. fol, 100 faith, Furibfus antem flipulari non poreff, ecalia' negotium agere, quia non intellig' qu'agit: And thèree it feems unreasonable that Acts done by them who have no Discretion nor the Use of Reason, Qui (as Bracton saith) on multum diffant a brutis qui ratione carent, should bind them ; co. Lit. 135. b. nd therefore it is (as is commonly faid) a great Defect in Samf. Prare Law, that no Tutor is affigued to them by Law, who may pro-33. b. ted them, and principally their Inheritance: As to that it ouf be known, that the Law of England has provided for mem a Tutor, and has made Provision for the Prefervation of their Inheritance, and their Goods also, and therefore in the Case of an Ideot, or Fool natural, for whom there is no Co. Lit. 247. 24 Expediation but that he during his Life will remain without Discretion and Use of Reason, the Law has given the Custody of him, and of all that he has to the K. who (as F. N. B. 232. fays) is bound of Right by his Laws to defend his Subjects. and their Goods and Chattels, Lands and Tenements; and because every Subject is in the K's Protection, an Ideor who an't defend or govern himself, nor order his Lands and Tenements, Goods and Chattels, the K. of Right ought to have him, and to order him his Lands, Goods and Chattels, and this, it appears, was the Common Law for Britton fo. 16. who wrote anno 5 E. t. faith, That if any Heir is a Fool natural, by which he is not able to demand and keep &c. his Inherimace, that fuch Heirs of whomfoever they hold Male or Female remain in the Custody of the K. with all their Inheritince; and thence it follows that the Statute of Prerog. Regis Stamf. Prerog. mp. 9. made in 17 E. 2. long Time after Britton wrote, was \$2. b. 34 but a Declaration of the Common Law, and therewith a-2 Inft. 14 rees 18 E. 3. Scire facias 10. where it appears by the faid 1And. 24. Statute Prarogativa Regis; quod Rex habebit cuffodiam terra-Moor. 4. tum fatuorum naturalium, capiendo exitus earandem fine vaffo & deftractione, O' inveniet eis necessaria fua, de cufuscunque food' three ella fuerint, & post mortem corundem reddat cam reclis haedib', itu qd' nullatenus per eofdem fatuos ulcenentur, nec qd' cor' redes experedentur: Upon these Words I observe divers Things. 1. That the Law gives the K. but the Custody of the Lands of the Ideot, that altho' it continues during the Life the Ideot, yet having but the Custody, the K. has not the Stamf. Pr. 35. b. freehold in him, but the Freehold is in the Ideot, for the chatute lays, Quod post moriem torum reddiet eam rechisherediand that appears also in 17 E. 3. 11. O 13 E. 3. Saver ault 37. 2. Altho' the Statute fays, Coffodiam terrarum, yet K. thall have as well the Custody of the Body, and of their ods and Chattels as of the Lands and other Hereditaments. end as well those which he has by Purchase, as those which he Co. Lit. 2. b.

BEVERLEY's Cafe. PART IV. has as Heirs by the Common Law. 3. That he ought to be

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an Ideot a nativitate, f. fatuis naturalis, and not by Accident or Infirmity, 4. That no Feoffment, Gift, Leafe or Releafe that an Ideot can make of his Inheritance, but may be avoided during his Life, which appears by these Words, ita qd' nullatenus per eosdem fatuos alienentur, nec qd' eorum hare-des exharedentur: Suppose then that an Ideot above the Age of 21 Years, makes a Feoffment in Fee of his Inheritance, if you ask how and in what Manner it may be avoided during his Life? I answer, that if it is found by Office at the

quifition and Verdict of 12 Men at the K's Suit, who are not

Stamf. Przrog. 34. b. \* Antea 56. b. Br. Ideot 2. Br. Travers de office 22.

(6) Jenk Cent. 40 (a) King's Suit, that he was Ideot a nativitate, and that Co. Lit. 247. 2. he has alien'd his Lands, then upon a Scire faciar against the 2 Rol. Rep. 337. Alienees the Land shall be seised into the K's Hands, and thereby the Inheritance shall be revested in the Ideot, 18 E. 3. Sci'fac' 10. 32 E. 3. Sci'fac' 106. 50 \* Aff. 2. For the Sta-Antea 56. b. tute says, qd' post mortem corum reddat cam rectis heredib', which Br. Alicnation 4 the K. can't do, neither can the K. have the Possession of the Land to his own Use, unless by the Office and the Seisure, such Conveyance made by the Ideot be destroy'd, and that doth not Br. Feotiment de, impugn the faid Maxim of the Common Law. For in this Case the Ideot in no Plea that he can plead shall disable (b) or stultify himself: But all this is found by Office by the In-

concluded to speak the Truth, and such Office when it is † 8 Co. 170. 2. found, inall have Theractoria at Feoffments, Releases, (b) Jenk-Cent. 40 all mean Acts done by the Ideot, as Feoffments, Releases, (c) Jenk-Cent. 40 all mean Acts done by the Ideot, as Feoffments, Releases, (c) Jenk-Cent. 40 all mean Acts done by the Ideot, as Feoffments, Releases, (c) Jenk-Cent. 40 all mean Acts done by the Ideot, as Feoffments, Releases, (c) Jenk-Cent. 40 all mean Acts done by the Ideot, as Feoffments, Releases, (c) Jenk-Cent. 40 all mean Acts done by the Ideot, as Feoffments, Releases, (c) Jenk-Cent. 40 all mean Acts done by the Ideot, as Feoffments, Releases, (c) Jenk-Cent. 40 all mean Acts done by the Ideot, as Feoffments, Releases, (c) Jenk-Cent. 40 all mean Acts done by the Ideot, as Feoffments, Releases, (c) Jenk-Cent. 40 all mean Acts done by the Ideot, as Feoffments, (c) Jenk-Cent. 40 all mean Acts done by the Ideot, as Feoffments, (c) Jenk-Cent. 40 all mean Acts done by the Ideot, (c) Jenk-Cent. 40 all mean Acts done tound, thall have + Relation a tempore nativitatis, to avoid F. N. B. 202. d. Go. and therewith agree 23 E. 3. Go. Sci fac' 106. G Stamf. Prerog. 34. b. F. N. B. 202. E. But notwithstanding the Words Br. fairs 62. of the faid Act are general and emphatical nullaten' alienen', yet Fitz. Iffue 53. Godb. 302. Co. Lit. 247.2.b. if he aliens by Fine, (c) of Recording and fo after such Of-Br. Dum suit in- has been said, for the Cause aforesaid, and so after such Ofif he aliens by Fine, (c) or Recovery; it shall bind him, as fice found all Gifts made by him of his Goods or Chattels, Br. Entry congeable 42.

In. Sect. 405.
Lit. 95. a. b.

(c) Cr. El. 187.

any Bond or Writing that he has made, the K. by his Write Co. Lit. 247. a.

Perk. Sect. 24.

(fo long as the Office flands in Force) reciting the Office shall Br. Fines levies, fend a Supersedeas to the Justices where the Suit is commenc'd:

2 Inft. 483. (d) Hard. 434. Stiles 21.

But the K. shall not have the Custody of the Land which an Ideot holds by (d) Copy, for that is but an Estate at Will by the Common Law, and if the King should have the Custody of it, it would be a great Prejudice to the L. of the Manor; but yet an Alienation made by an Ideot of his Copyhold after Of-

fice found shall be avoided, vide 13 Eliz. Dyer 302. And that the K. shall have the Protection of the Goods (e) and Chattels of an Ideot as well as of his Lands, appears by F. N. B. 232. b. where he fays, that if an Ideot who can't defend, or govern

hims. nor order his Lands, Tenements, Goods, and Chattels, the K. of Right ought to have him in his Cust. and to protect him and his Lands, Goods and Chattels; and this appears also by the Writ in the Reg. de Ideota inquirendo, where it is faid,

TIDE.N.B.232.b. Quia (f) accep' qd' J. de B. fatuus & Ideot' exift', ita qd' regim'

(e)Stamf.Pr. 36.a

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ipfius terrarum, tenementorum, bonorum & catallorum suor n sufficit, O quod ipse in fatuitate sua magnam partem terrao tenementor' Juor' alienavit, & etiam magnam partem mor' & catallor' fuor' dissipavit in exharedationem suam, & nori prajudic' manifest', nos indemnitate ipsius in bac parte prospire volentes, &c. By which it appears, that by the Common w the K. shall have as great Protection of the Goods and hattels of an Ideot, as of his Lands, and that as well the confumption of his Goods and Chattels, as the Alienation f his Lands is to be remedy'd and redress'd by the K. to hom the Law gives his Custody and Protection. And as af- 8 Co. 170. 2. office found he can't alien, give, O'c. so Alienations, Gifts, bereof found, as is aforesaid, for no Laches shall be ac-counted in the King, nor no Prejudice thereby accrue to he Ideot for not fuing of the Office before the Feoffment Gift. But if the Ideot dies before Office found, after his Death no Office can be found, for the Words of the Writ ne, Et ipsum viis & modis quibus super statu suo melius poteriis informari circumspecte examinaretis, &c. which can't be one when he is dead, and without Office the King can't be entitled, 16 E. 3. Livery 30. and then the former Differences as to his Lands and Goods hold. The same Law if a Man who was of found Memory becomes Non Stamf. Prarce compos mentis, and afterwards aliens his Land, or Goods 34 2. or Chattels, and afterwards by Office at the King's Suit lit s found, that he was Non compos mentis, and that he has liened, &c. the King shall protect him who can't protect himself, as is aforesaid, and shall take the Profits of his Lands, and of all that he had (which the K. could not do if his Ale-Dyer 16. a. nation or Gift should stand) and therewith maintain him and his Family, but the King shall not take any Part of the faid Profits to his own Use; and all this appears by the Statute of Prarogat. Reg. cap. 10. which was but a Declarafion of the Common Law; Item Rex providebit, &c. Et nota that the faid Words of F. N. B. 232. that the K. is bound of Stamf. Prarog. Right by his Laws to defend his Subjects, and their Goods 36. b. 25id. 124 and Chattels, Lands and Tenements, extend as well to Non compos mentis, as to an Ideot; but in Case of Non compos menis, the K. has not any Interest in the Lunatick (as he has in the Ideot) because the Lunatick may recover his Memory which he has loft, and therefore in the Case of the Ideot, the Law fays, Rex habebit Custodiam, but in the Case of Non 17 E.2.capes, 10compos mentis, Rex providebit. And as to Alienation made by Non compos mentis, the Words are all one as they are in the Case of the Ideot, s. Ita quod prad' terr' & tenementa infra red' tempus nullatenus alienen, and therefore after the Office found thereof, the Alienation, Gift, Oc. of him who is Non compos mentis, are in equal Case with the Alienation or Gift of an Ideot, and the faid Words of the faid Writ in the Regilter, Quia accepimus quod I. de B. fatuus & Ideota exiftit, Oc. extend as well to Non compos mentis as to a Fool natural, F. N. B. 232. b. fidem I. fatuus & Ideota fit neone, & fifit, tunc utrum a nati-vitate fua, an ab alto tempore, & fi ab alio tempore, tunc a quo

tempore & qualiter & quomodo, & fi lucidis gaudet intervallis, & fi idem I. in codem flato existens terras aut tenementa aliqua alie-

Anderf. 23. Moor 4. N. Bendl. 17, 18.

navit neone, Oc. So that it appears that in Judgment of Law, Future of Ideota include as well Non compos mentis, as Ideota a nativitate, and therefore they are in the same Case, as to the Alienation of their Lands and Tenements, Goods and Chartels. Hill. 28. H. 8. Rot. 401. in C. B. the Cafe was: In Trespass Quare clausum fregit, and cut his Trees in Paddington in the County of Midd per Johan Frauncis versus Will Holmes, the Def, pleaded, that it was found by Office before Dy. 25,26-pl. 164 the Escheator in the said County of Midd, that the said John Fraunces was a Lunatick, &c. and that he was feifed in Fee of the Land in which, Oc. wherefore the K. feised this Perfon, and his Land, and by his Letters Patents granted the Rule, Custody and Government of the same Person and of his Lands to the faid Holmes, quamdiu that the Person was Junatick, to take the Profits to his own Use, and so justify'd, and pray'd in Aid of the King, and thereupon it was demurred in Law, if he should have Aid or not. And it was adjudg'd, that he thould not have Aid of the K. for this Grant was utterly void, for the K. is bound to keep the faid Lunatick, his Wife, Children and Houthold, with the Profits of the Land, and without taking any thing to his own Use, but all to the Use of the Non compos mentes and his Family, and all this to the Intent that the K. may provide that he who wants Reason shall not alien his Lands, nor waste his Goods; and the K. after Office found, has only Provision, and has not any Custody or Posses. of the Body or Lands of one Non comp' ment, as he has of an Ideot, and he has nothing to grant over: But if the K. provides one to have Care and Charge that he who is Non compos mentis, and his Family shall be maintain'd, and that nothing shall be wasted; or if one of his own Head takes so much upon himself, in this Case he is but as Bailiff of him who is Non compos mentis, and shall be accountable as Bailiff to him who is Non compos mentis, or to his Executors or Administrators, and he can't cut down Trees but for necessary Housebote, Ploughbote and Cartbote, and to repair ancient Pales, and all that which a Bailiff may do he may do, and not otherwise. And therewith agrees a Writ in the Register directed to the Sheriff, Diligenter inquiras utrum I. de B. a nativitatis sua tempore semper hactenus purus Ideota existit, per qu' cuftod' terrar' O' tenementor' suorum in C. ad nos debeat pertin', an per infortun' vel alio modo in hujusm' infirmitat' poffee incider', propter q'd hujusm' custod' ad nos pertinere non debeat. And so by these Differences annex'd you will understand your

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your Books, 18 E. 2. Fines 120. 3 E. 3. Tit. Entry cangeable Statbam. 3 E. 3. Formedon. \_\_\_ 5 E. 3. 70. 10 E. 3. Scire facias 10. and as well 32 E. 3. Scire facias 106. 17 Aff. 17. 17 E. 3. 11. 25 Aff. 4. 35 Aff. 10. 50 Aff. 2. 9 H. 6.6. 39 H. 6. 24. 12 E. 4. 8. F. N. R. 202: & Stamf. Prarog. 34. Brack. lib. 2. fo. 11, 12. 0 lib. 3. fo. 100. Britton fo. 66. Brooke Co. Lit. 246. 5. Tis. Dum fuit infra etatem 9. and divers Writs in the Register 247. 2 b. . — and which are agreeable with the true Reason of he Common Law. Nota Reader, Ideota five Ideotes is a Greek Word, and properly fignifies a private Man who has not any publick Office; Apud Latinos accipitur for illiterate and fimle; apud Jurisperitos nostros, Non compos mentis; Apud Angis in common Speech, natural Fool: Fatuus prop' dic' a fando, quia fatur qu' puer primo fatur, id est, quia inepie loquitur; sed ud Jurisperitos nostros accip' pro Non comp' mentis, & fatuus Co. Lit. 246. bi que omnino defipit : Stultus dicitur a stupore, quia stultus est qui ropter stuporem movetur; levius est esse stultum quam fatuum, s. brudens, improvidus, ignorans mali & boni. Infanus qui abella ratione omnia cum impetu & furore facit. Amens, ab (a) que est particula privativa, & mente, id est consilio & animo. Demens, est qui non cogitat quid agit aut loquitur, (de) est paricula privativa: Amens qui prorsus insanit; Arist. 7. Ethicoum, Amentes dicuntur qui a natura experti rationis solum sennum munus exequantur.

#### N I S

### Casuum istius Libri series:

An training the state of the st	Fol
T 7 Ernon's Cafe.	Mich. 14 & 15 Eliz. 1
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ctions for Slander.	Trin. 20 El. 12
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10 Rawlins's Case.	Mich. 29 0 30 El. 52
11 The Case of the Wardens of Com	1
minalty of Sadlers.	Trin. 30 El. 54
12 Force and Hembling's Case:	Mich. 30 @ 31 El, 60
13 Herlakenden's Cafe	Pascb. 31 El. 61
14 Fulwood's Cafe.	Hill. 33 El. 64
15 Hind's Cafe.	Trin. 33 El. 70
16 Boroughes's Cafe,	Pasch. 38 El. 72
17 Palmer's Case.	Hill. 39 El 74
18 Holland's Cafe.	Trin. 39 El. 75
19 Cases of Corporations.	Trin. 39 El. 75 Mich. 40 & 41 El. 77
20 Digby's Cafe.	Hill. 41 El. 78
21 Nokes's Cafe:	Trin. 41 El: . 80
22 Sir Andrew Corbet's Cafe.	Mich. 41 0 42 El. 81
23 Southcote's Cafe.	Pascb. 43 El. 83
24 Luttrel's Cafe.	Pasch. 43 El. 86
25 Drury's Cafe.	Trin. 43 El. 89
26 Slade's Cafe.	Trin. 44 El. 92
27 Adams and Lambert's Cafe.	Mich. 44 & 45 El. 104
28 Acton's Cafe.	Hill. 45 El. 117
29 Dumport's Cafe.	Hill. 45 El. 119
30 Bustard's Case.	Pasch.1 Jac. Regis 121
31 Beverley's Case of Non compe	Or January January
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